

**REDACTED**

**Exhibit 1**

**To North Dakota's Response  
in Opposition to the United  
States of America's Motion  
for a Protective Order  
(ECF No. 264)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

Civil Action No. 1:19-cv-00150-DMT-ARS

---

VIDEOTAPE DEPOSITION OF:  
LIEUTENANT GENERAL TODD T. SEMONITE (RET.)  
July 26, 2022  
(via RemoteDepo)

---

STATE OF NORTH DAKOTA,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

---

PURSUANT TO NOTICE, the videotape deposition of LIEUTENANT GENERAL TODD T. SEMONITE (RET.) was taken on behalf of the Plaintiff in Prince William County, Virginia, by remote means, on July 26, 2022, at 8:34 a.m. MDT, before Gail Obermeyer, Registered Professional Reporter and Notary Public within Colorado, appearing remotely from Douglas County, Colorado.

July 26, 2022

Page 2			Page 4		
1	REMOTE APPEARANCES		1	I N D E X (Continued)	
2	For the Plaintiff:		2		INITIAL
3	PAUL M. SEBY, ESQ.		3	DEPOSITION EXHIBITS: (Previously marked)	REFERENCE
	PAUL B. KERLIN, ESQ.		4	Exhibit 26 Email to Archambault from	154
4	Greenberg Traurig, LLP		4	Henderson, 9/16/16, Subject:	
	1144 15th Street, Suite 3300		5	FW: Press Release	
5	Denver, Colorado 80202		5	(UNCLASSIFIED), Bates Nos.	
	Email: sebyp@gtlaw.com		6	USACE_00003114 - USACE_00003115	
6	kerlinp@gtlaw.com		7	Exhibit 420 (Confidential document)	149
7	For the Defendant:		7	Bates Nos. ARMY_0011059 -	
8			8	ARMY_00110567	
9	ERICA ZILIOLI, ESQ.		9	Exhibit 429 (Confidential document)	163
10	TIMOTHY B. JAFEK, ESQ.		9	Bates Nos. ARMY_00110568 -	
	United States Attorney's Office/		10	ARMY_00110570	
	District of Colorado		11	Exhibit 494 Email to SRJ2@ios.doi.gov from	142
11	1801 California Street, Suite 1600		11	U.S. Department of the Interior,	
	Denver, Colorado 80202		9/9/16, Subject: Joint		
12	Email: erica.m.zilioli@usace.army.mil		12	Statement from the Department of	
	timothy.jafek@usdoj.gov		13	Justice, the Department of the	
13	Also Present (Remotely):		14	Army and the Department of the	
14	Michael Banks, Remote Video Technician		14	Interior regarding Standing Rock	
15	Rachel Hymel		15	Sioux Tribe v. U.S. Army Corps	
16			16	of Engineers, Bates Nos.	
17			17	DOI_00000001 - DOI_00000002	
18			18		
19			19		
20			20		
21			21		
22			22		
23			23		
24			24		
25			25		
Page 3			Page 5		
1	I N D E X	PAGE	1	WHEREUPON, the following proceedings	
2	EXAMINATION OF LIEUTENANT GENERAL		2	were taken pursuant to the Federal Rules of Civil	
	TODD T. SEMONITE (RET.):		3	Procedure.	
3	July 26, 2022		4	* * * * *	
4	By Mr. Seby	7	5	THE VIDEOGRAPHER: We are now on the	
5	By Ms. Zilioli	--	6	record. Participants should be aware that this	
6			7	proceeding is being recorded, and as such, all	
7	DEPOSITION EXHIBITS:	INITIAL	8	conversations held will be recorded, unless there is a	
8	(Exhibits provided electronically to the	REFERENCE	9	request and agreement to go off the record. Private	
	reporter.)		10	conversations and/or attorney-client interactions	
9			11	should be held outside the presence of the remote	
10	Exhibit 684 (Confidential document)	111	12	interface.	
	Bates Nos. USACE_00044967 -		13	This is the remote video-recorded	
	USACE_00044968		14	deposition of General Todd Semonite, being taken by	
11	Exhibit 686 (Confidential document)	115	15	counsel for the plaintiff. Today is Tuesday, July 26,	
12	Bates Nos. USACE_00002482 -		16	2022. The time is now 2:34 p.m. UTC, 8:34 a.m.	
	USACE_00002484		17	Mountain. We are here in the matter of State of North	
13	Exhibit 688 (Confidential document)	124	18	Dakota versus The United States of America.	
14	Bates No. USACE_00049705		19	My name is Michael Banks, remote video	
15	Exhibit 689 (Confidential document)	126	20	technician on behalf of U.S. Legal Support. I am not	
	Bates Nos. USACE_00026566 -		21	related to any party in this action, nor am I	
16	USACE_00026569		22	financially interested in the outcome. At this time	
17	Exhibit 690 Email to Tedeschi from Turner,	129	23	will the reporter, Gail Obermeyer, on behalf of	
	9/8/16, Subject: FW:		24	U.S. Legal Support, please enter the statement for	
18	LTG SEMONITE TASKER - LAYDOWN OF		25	remote proceedings into the record.	
	PROTEST SITE - 8 SEP 2016 MRD				
19	Morning Report (UNCLASSIFIED)				
	Bates Nos. USACE_00027169 -				
20	USACE_00027207				
21	Exhibit 694 (Confidential document)	146			
	Bates Nos. ARMY_00078874 -				
	ARMY_00078879				
22					
23					
24					
25					

July 26, 2022

<p style="text-align: right;">Page 6</p> <p>1                   THE REPORTER: The attorneys participating    2 in this deposition acknowledge that I am not physically    3 present in the deposition room and that I will be    4 reporting this deposition remotely. They further    5 acknowledge that, in lieu of an oath administered in    6 person, the witness will verbally declare his testimony    7 in this matter is under penalty of perjury. The    8 parties and their counsel consent to this arrangement    9 and waive any objections to this manner of reporting.    10 Please indicate your agreement by stating your name and    11 your agreement on the record.</p> <p>12                   MR. SEBY: This is Paul Seby, counsel for    13 the plaintiff, State of North Dakota, and we agree.</p> <p>14                   MS. ZILIOLI: This is Erica Zilioli,    15 counsel for the defendant, United States, and we agree.</p> <p>16                   THE REPORTER: And, General Semonite, do    17 you declare your testimony in this matter is under    18 penalty of perjury?</p> <p>19                   THE DEONENT: I understand and I agree.</p> <p>20                   THE REPORTER: Thank you.</p> <p>21                   MR. SEBY: You ready?</p> <p>22                   THE REPORTER: Yes.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 I'd like to go over a few just basic ground rules for    2 the deposition, most of which are simply intended to    3 help the court reporter take down everything we say.    4 Everything we say today is being written down and    5 videotaped. And because of that, if you'd please    6 verbalize your responses with a yes or no or other    7 manner of answer, and not nodding your head, one way or    8 the other, so that's a nonverbal communication.</p> <p>9                   Likewise, it's difficult for the court    10 reporter to take down what we say -- are saying if we    11 happen to inadvertently talk over each other. So I'll    12 do my best not to interrupt you; if you would do the    13 same, if that's acceptable. And if you need a break,    14 please just let me know. Otherwise, I suggest we take    15 a short break every hour or so. If you do not    16 understand a question that I've posed, please just let    17 me know, and I'll -- and ask me to repeat it or    18 rephrase it, and I'll do my best to clarify what I'm    19 trying to ask you. Okay?</p> <p>20                   A. Sounds good.</p> <p>21                   Q. And if you answer a question I've asked,    22 I'm going to assume that you've understood the question    23 that I am asking. Is that understood?</p> <p>24                   A. Understood.</p> <p>25                   Q. Okay. General, is there anyone with</p>
<p style="text-align: right;">Page 7</p> <p>1                   LIEUTENANT GENERAL TODD T. SEMONITE (RET.),    2 having verbally declared his testimony in this matter    3 is under penalty of perjury, testified as follows:</p> <p>4                   EXAMINATION</p> <p>5                   BY MR. SEBY:</p> <p>6                   Q. Okay. Good morning, Mr. Semonite. May I    7 refer to you as -- as Mr. or General, sir?</p> <p>8                   A. General is probably great, sir.</p> <p>9                   Q. That's -- that's fine. I'm happy to do    10 that. Good morning, General Semonite. I -- my name is    11 Paul Seby. I'm an attorney with the law firm of    12 Greenberg Traurig and also a Special Assistant Attorney    13 General for the State of North Dakota, and we represent    14 the State in this proceeding. My co-counsel, Paul    15 Kerlin, is on the Zoom with us today. And today, we'll    16 refer to our client collectively as "North Dakota" or    17 the "State." Do you understand, sir, that you have    18 just been sworn in this morning?</p> <p>19                   A. I do.</p> <p>20                   Q. Would you please state your full name for    21 the record.</p> <p>22                   A. Todd Thurston Semonite.</p> <p>23                   Q. And the middle name was Thurston?</p> <p>24                   A. Thurston.</p> <p>25                   Q. Got it. Thank you. Before we begin, sir,</p>	<p style="text-align: right;">Page 9</p> <p>1 the room -- in the room with you this morning?</p> <p>2                   A. Erica is here.</p> <p>3                   Q. Okay. And are you relying upon any    4 documents in front of you during the deposition today    5 to answer any questions or refresh your recollection on    6 anything?</p> <p>7                   A. No documents.</p> <p>8                   Q. Okay. And you understand, sir, that    9 you're obligated by oath to tell the truth this    10 morning?</p> <p>11                   A. I do.</p> <p>12                   Q. Okay. General, what did you do to prepare    13 for your deposition today?</p> <p>14                   A. So I've never been deposed, so Erica asked    15 me to come in to help me understand the process of a    16 deposition.</p> <p>17                   Q. And you met with her to do that?</p> <p>18                   A. I did, in person. I did, twice.</p> <p>19                   Q. Did you meet with anyone else, with or    20 without Erica?</p> <p>21                   A. There was Tim, who's on the -- on the    22 video teleconference. He and one of his counterparts    23 were on the -- on virtual.</p> <p>24                   Q. Yeah. Okay. When did you meet, sir, with    25 your counsel?</p>

July 26, 2022

<p style="text-align: right;">Page 10</p> <p>1        A. Last week was one session. I think the 2 one before that was two weeks ago, it might have been 3 three weeks ago. But both of these probably happened 4 in the last two or three weeks, two times.</p> <p>5        Q. How long did you meet on each occasion?</p> <p>6        A. I think anywhere from two to three hours. 7 The first one might have been three hours. The second 8 one was perhaps a little shorter.</p> <p>9        Q. Okay. Did you talk to anyone else, other 10 than your counsel, in preparation for your deposition 11 today?</p> <p>12       A. I don't believe I did, other than my wife 13 and maybe somebody just in my office that knows that 14 I'm out of the net all day today.</p> <p>15       Q. Sure. Are you aware that North Dakota has 16 taken the sworn depositions of Major Startzell; former 17 United States Marshal for the State of North Dakota, 18 Paul Ward; Corps of Engineers employees Eileen 19 Williamson and Eric Stasch; and Colonel John Henderson 20 and General Scott Spellmon; Mr. Lowry Crook; former 21 Secretary of the Interior, Sally Jewell; and former 22 Assistant Secretary of the Army for Civil Works, 23 Jo-Ellen Darcy? Are you aware of that?</p> <p>24       A. A lot of names. The first four or five I 25 do not recognize. Obviously, I know Crook, Darcy,</p>	<p style="text-align: right;">Page 12</p> <p>1 take -- I did not have copies of those documents.</p> <p>2        Q. Okay. Well, what happened? They were 3 projected on the Zoom?</p> <p>4        A. Right.</p> <p>5        Q. Sure.</p> <p>6        A. They were projected up on the screen.</p> <p>7        Q. Okay. Did you do any research on your own 8 about the issues in this case?</p> <p>9        A. I did not, and I was specifically 10 instructed to not go into a lot of detail.</p> <p>11       Q. Yeah. Okay. Did you refer to any notes 12 from the past that you may have maintained with respect 13 to your involvement in the DAPL-related protests in the 14 state of North Dakota in 2016 and '17?</p> <p>15       A. I did nothing to research my notes.</p> <p>16       Q. Okay. All right. General, are you aware 17 that your deposition today pertains to North Dakota's 18 case against the United States under the Federal Tort 19 Claims Act, involving \$38 million in damages that the 20 State of North Dakota seeks to recover from the United 21 States as a result of the Corps of Engineers' and other 22 federal officials' actions associated with the protests 23 against the Dakota Access Pipeline? Do you understand 24 that, sir?</p> <p>25       A. In a very vague context, but I do not</p>
<p style="text-align: right;">Page 11</p> <p>1 Spellmon, Henderson, and I understand Jewell. The 2 first several names, I didn't understand who those 3 were.</p> <p>4        Q. Okay. No -- no problem. The -- the 5 question was, are you aware that they have been 6 deposed?</p> <p>7        A. I understood there were some depositions 8 that have been done already.</p> <p>9        Q. Okay. Have you spoken to any of the 10 individuals that I identified to you about their 11 depositions in this matter, prior to this morning?</p> <p>12       A. Absolutely not.</p> <p>13       Q. Okay. Have you reviewed any of their 14 deposition transcripts or videos?</p> <p>15       A. Absolutely not.</p> <p>16       Q. Okay. Did you review any documents, prior 17 to today's deposition, in preparation for the -- the 18 deposition this morning?</p> <p>19       A. There were a couple documents that Erica 20 showed me that I think had been introduced in 21 discovery, so I am aware that there was some email 22 traffic.</p> <p>23       Q. Sure. Did you review documents on your 24 own or always with your attorney?</p> <p>25       A. Only with my attorney. And I did not</p>	<p style="text-align: right;">Page 13</p> <p>1 understand the details of the tort claim. I'm not an 2 expert on legal actions.</p> <p>3        Q. No. You understand, though, your 4 deposition today is in relation to that matter?</p> <p>5        A. I do.</p> <p>6        Q. Okay. Are you aware of any of the United 7 States District Court for the District of North 8 Dakota's rulings in the case thus far?</p> <p>9        A. So I don't understand the question, 10 exactly. I understand some rulings that the federal 11 government made several years ago. I don't know of any 12 of the North Dakota rulings.</p> <p>13       Q. These are -- the ones I referred to, sir, 14 are from the United States District Court, Federal 15 Court, in North Dakota with respect to this case. Are 16 you aware of any of those orders or decisions?</p> <p>17       A. I remember that some of those rulings were 18 made, but I don't have any specific details on where or 19 how they were done.</p> <p>20       Q. Have you read any of the court's orders or 21 determinations in this case to date?</p> <p>22       A. Not at all.</p> <p>23       Q. Okay. Okay. General, what is your 24 current residence address? Where do you reside, sir?</p> <p>25 I don't need a street address.</p>

July 26, 2022

<p style="text-align: right;">Page 14</p> <p>1           A. I live at -- yeah. 15 -- or 13159 Lake 2 Hill Drive, Manassas, Virginia 20181.</p> <p>3           Q. Thank you. And where are you from, 4 General?</p> <p>5           A. Let me back up. It's not Manassas. It's 6 Nokesville. It's in a vicinity of Manassas. But it's 7 N-o-k-e-s-v-i-l-e. I was born and raised in Bellows 8 Falls, Vermont.</p> <p>9           Q. Bellows Falls?</p> <p>10          A. Correct.</p> <p>11          Q. Would you describe and summarize your 12 education, please.</p> <p>13          A. Following high school, I went to West 14 Point United States Military Academy for four years. 15 And then I have several civilian degrees and military 16 degrees -- I can go into more detail -- both on -- in 17 civil engineering and also in military arts and 18 sciences.</p> <p>19          Q. And are those degrees from West Point or 20 other institutions?</p> <p>21          A. Bachelor of science is from West Point, a 22 master's of science in civil engineering from the 23 University of Vermont, a master's of science in 24 military arts and sciences from the Command and General 25 Staff College, Fort Leavenworth, Kansas. And I also</p>	<p style="text-align: right;">Page 16</p> <p>1 Engineers was helping to build Fort Drum, as a major, 2 in 1987. I did work in building the grid in Baghdad, 3 in 2003, as a colonel; and then from 2006 on, pretty 4 much uninterrupted, as a general officer working as, 5 initially, a division commander in charge of six or 6 seven states, then ultimately as the number two person 7 in the Corps of Engineers, called the deputy chief of 8 engineers; a short deployment to Afghanistan for 9 13 months, and then I was brought back in 2016 to serve 10 as the chief of engineers and basically served a 11 four-year tour and then was extended by the 12 Administration for another five months.</p> <p>13          Q. I see. Okay. Thank you for that. Would 14 you describe your position as the chief of engineers 15 with respect to the Dakota Access Pipeline project?</p> <p>16          A. So the chief of engineers really wears two 17 hats. Number one, the senior engineer in the 18 Department of Defense for all engineering matters, both 19 tactical, strategic; and with respect to the Corps of 20 Engineers, anything that the Corps of Engineers has to 21 do to be able to support deployed soldiers or 22 construction of installations, Civil Works, 23 environmental, et cetera. The second hat is actually 24 the commander of the Corps of Engineers, a 25 36,000-person organization that does roughly about a</p>
<p style="text-align: right;">Page 15</p> <p>1 went to the Army War College. At the time I went, 2 there was not a degree given. They gave a degree about 3 a year after.</p> <p>4          Q. I see. Have you always been employed with 5 the United States military?</p> <p>6          A. Until I retired in November of 2020.</p> <p>7          Q. And what do you do as post-government- 8 service work?</p> <p>9          A. I took a job as president of a large 10 architect/engineering firm that does federal work.</p> <p>11          Q. And is that located in Virginia?</p> <p>12          A. I think the headquarters office is 13 actually in New York City, but our federal office is 14 here in Washington, D.C.</p> <p>15          Q. I see. Okay. Now, I'd like to go back to 16 your time as -- in the -- the Army Corps of Engineers. 17 Would you describe your -- the evolution of your career 18 in the -- in the United States Army.</p> <p>19          A. So all second lieutenants start out pretty 20 much as a tactical officer working with troop units. 21 But in the Corps of Engineers, we cycle our officers 22 back and forth between troop duty and with the 23 U.S. Army Corps of Engineers, which is much more of an 24 engineering firm.</p> <p>25          I think my first job in the Corps of</p>	<p style="text-align: right;">Page 17</p> <p>1 \$68 billion portfolio a year.</p> <p>2          Q. Okay. And, sir, if you would describe 3 the -- your position, specifically with respect to the 4 period of time March of 2016 to 2017, involving the -- 5 the United States Government's consideration and review 6 of the Dakota Access Pipeline project.</p> <p>7          A. So I didn't actually take command until 8 May, so I won't go to March and April. I was preparing 9 for command. And then, basically, the first several 10 months of my command were orienting myself to the task 11 and missions of the command, sending a strategic 12 vision, trying to put systems in place; what you would 13 expect most senior leaders, like a CEO of large 14 organizations, to do.</p> <p>15          The Corps has thousands of projects. I 16 pride myself on not getting deeply involved in any 17 projects, so I probably didn't do anything with this 18 particular mission until sometime when we began to see 19 activity. I think it was somewhere around the end of 20 August or maybe even September.</p> <p>21          Q. Okay. So you -- you became chief of 22 engineers in May of 2016? Make sure I understand that.</p> <p>23          A. That's correct. May 19, 2016.</p> <p>24          Q. Okay. Okay. And -- and who was your 25 immediate predecessor as chief of engineers?</p>

July 26, 2022

<p style="text-align: right;">Page 18</p> <p>1       A. Lieutenant General Thomas Bostick.</p> <p>2       Q. And where did Mr. -- or General Bostick go</p> <p>3 after he left the chief of engineers position?</p> <p>4       A. I think he stayed physically in the D.C.</p> <p>5 area. I believe he took a private job. And I have not</p> <p>6 had a lot of contact with him, so I don't -- I'm not</p> <p>7 prepared to answer that question in any detail.</p> <p>8       Q. So are you saying he retired?</p> <p>9       A. He did. I'm sorry. He retired.</p> <p>10       Q. Okay. Thank you. So I -- I want to</p> <p>11 understand the -- the command structure of the -- the</p> <p>12 military command structure, basically, and -- and</p> <p>13 who -- who you report to and who reports to you. Would</p> <p>14 you help me understand your relation in the United</p> <p>15 States Army and who your superiors were?</p> <p>16       A. So the Corps of Engineers is a --</p> <p>17 basically, a standalone unit that reports to the number</p> <p>18 two general in the Army. It's called the Vice Chief of</p> <p>19 Staff. And that person reports to the Chief of Staff.</p> <p>20 So my direct report was a four-star general in the</p> <p>21 Army. And then underneath me I have -- all of those</p> <p>22 36,000 employees are primarily broken into a</p> <p>23 headquarters element here in Washington, D.C.</p> <p>24       And then it's important that you remember</p> <p>25 these next terms of reference. We have divisions which</p>	<p style="text-align: right;">Page 20</p> <p>1 a general, J-E- -- or G-E-N Dan Allyn. I think he only</p> <p>2 stayed there for about a year. And the Chief of Staff</p> <p>3 was General Mark Milley, who is currently the Chairman</p> <p>4 of the Joint Chiefs of Staff.</p> <p>5       Q. Yes. Okay. And where does the Secretary</p> <p>6 of the Army fit in that regard?</p> <p>7       A. So this is a -- kind of a dual chain of</p> <p>8 command. The military reported up to the four-star</p> <p>9 general, General Milley, at the time. And at the same</p> <p>10 time, we, of course, are subservient to the civilian</p> <p>11 control of the government. So the Secretary of the</p> <p>12 Army -- basically, General Milley reports to the</p> <p>13 Secretary of the Army. At the time, it was</p> <p>14 Mr. Fanning.</p> <p>15       And then the Secretary of the Army has</p> <p>16 several, maybe seven or eight, what's called Assistant</p> <p>17 Secretary of the Army. And at the time, the Assistant</p> <p>18 Secretary of the Army for Civil Works was Ms. Jo-Ellen</p> <p>19 Darcy. So while I didn't report to her directly, I</p> <p>20 always listened to her guidance. I felt like we had a</p> <p>21 very strong relationship; but it was not a hard line,</p> <p>22 it was much more of a dotted line.</p> <p>23       Q. Thank you. Where -- where does Major</p> <p>24 General Ed Jackson fit into that schematic?</p> <p>25       A. So I talked about there being a</p>
<p style="text-align: right;">Page 19</p> <p>1 are normally -- they're commanded by a general officer,</p> <p>2 either a one- or a two-star, and they normally go</p> <p>3 anywhere from six to eight states. Underneath the</p> <p>4 division, the main unit of operation of the Corps of</p> <p>5 Engineers is a district. Some districts might have one</p> <p>6 or two states, some might have five or six states. We</p> <p>7 have 43 district commanders in the Corps of Engineers.</p> <p>8 They are worldwide, but most of them remain here in the</p> <p>9 continental United States, commanded by a colonel. But</p> <p>10 they're made up about about 99 percent U.S. Army</p> <p>11 civilians. The Corps only has maybe 500 military, the</p> <p>12 other 35,000-plus are civilian employees.</p> <p>13       Q. Thank you. And then with respect -- those</p> <p>14 are the individuals that report to you, sir, I</p> <p>15 understand. How about above you? What is -- you</p> <p>16 indicated the Vice Chief of Staff of the -- of the Army</p> <p>17 is your immediate direct report. And above that person</p> <p>18 is the -- is the Chief of Staff?</p> <p>19       A. That's correct.</p> <p>20       Q. Okay. And during the period of time</p> <p>21 2016 -- August 2016 through summer of 2017, what were</p> <p>22 the names of the people that held the Vice Chief of</p> <p>23 Staff position, singular or plural, just to make sure</p> <p>24 we capture all who were in there?</p> <p>25       A. So the Vice -- the Vice Chief of Staff was</p>	<p style="text-align: right;">Page 21</p> <p>1 headquarters element here in Washington, D.C.</p> <p>2 Underneath me, I had three two-star generals. They're</p> <p>3 major generals. One of them was the deputy chief of</p> <p>4 engineers, which mainly performed day-to-day activities</p> <p>5 of running a command. And then there are two</p> <p>6 operational components in the headquarters; one which</p> <p>7 does all military construction, think of that as DOD</p> <p>8 work and other federal agency work. The second</p> <p>9 component was Civil Works. General Jackson was the</p> <p>10 two-star who was the director of Civil Works.</p> <p>11       And I'd do a lot of delegation. Most of</p> <p>12 the time, if the division commanders, those 9, or those</p> <p>13 43 district commanders had specific issues or needed</p> <p>14 guidance in the Civil Works arena, then they would go</p> <p>15 up through General Jackson and seek help from him and</p> <p>16 his staff.</p> <p>17       Q. I see. What was the name of the</p> <p>18 individual that held the deputy chief of engineers</p> <p>19 position during your tenure, sir?</p> <p>20       A. I think the first -- when I came in, I</p> <p>21 think it was Major General Rick Stevens, but I -- he</p> <p>22 was at some point, but it might have been a couple</p> <p>23 months after. It was somewhere in that period Rick</p> <p>24 Stevens was the deputy chief of engineers.</p> <p>25       Q. Okay. And how about the major general</p>

July 26, 2022

<p>Page 22</p> <p>1 that -- that oversaw the military construction    2 component of the Corps? What was that individual's    3 name?</p> <p>4 A. I think -- I think, initially, it was    5 Major General Ken Cox, but I might be off by one    6 general. It ended up eventually being Major General    7 Tony Funkhouser afterward. They'd rotate about every    8 two years. They'd rotate out of those jobs.</p> <p>9 Q. I see. Okay. Okay. You mentioned    10 interacting with -- with Jo-Ellen Darcy, the Assistant    11 Secretary of the Army for Civil Works. What was    12 your -- what was the nature of your interaction with    13 her? Did you office in the same location as Ms. Darcy    14 or -- or not?</p> <p>15 A. Her office was in the Pentagon with a very    16 small staff, maybe 15 or 20 people. I delegated most    17 of the Civil Works actions to General Jackson, his    18 deputy, who was a senior civilian executive. And they    19 would have meetings, at least once a week, face to    20 face. We would -- Ms. Darcy and I would probably meet    21 maybe once a month to have a very, very high-level    22 review of issues, but it was much less frequent than    23 perhaps what I was doing more on the military side.</p> <p>24 I think it's important to also realize    25 that as the chief of engineers, I also was responsible</p>	<p>Page 24</p> <p>1 your predecessor's involvement, or did that carry over    2 into the beginning of your tenure?</p> <p>3 MS. ZILIOLI: Objection, relevance.</p> <p>4 A. So I got several onboarding classes.    5 Because I was in Afghanistan for 13 months, I was out    6 of the net for quite a while. Obviously, rulemaking    7 and ROTUS (phonetic) were things that I wanted to be    8 informed of. I think the other thing is -- is, that    9 was not necessarily a finite event. It continued to    10 evolve. Different states had different opinions, there    11 was different litigation. So I think it would be best    12 to characterize to say that we were always interested    13 or aware of where the Administration was going with    14 respect to Waters of the United States.</p> <p>15 Q. (BY MR. SEBY) Yeah. Was that a    16 controversial topic at the time you took your position    17 as chief?</p> <p>18 MS. ZILIOLI: Same objection.</p> <p>19 A. I don't believe it was real controversial.    20 I don't remember the details. It continues to be law,    21 based on different Administrations. And as the Corps,    22 we took our lead from where the Administration wanted    23 to go. But I was -- it was not something I laid awake    24 worrying about, necessarily.</p> <p>25 Q. (BY MR. SEBY) Okay. Was it -- was it</p>
<p>Page 23</p> <p>1 for the training and resourcing of 90,000 soldiers.    2 That's a different -- those are troop units. We're    3 talking about -- the Corps of Engineers, right now, is    4 a command. But most of -- a lot of my duties were    5 going to visit troop units and helping the Army    6 understand how to fight the wars in Iraq and    7 Afghanistan. So that's another critical component of    8 what I did as really a dual-hatted military leader.</p> <p>9 Q. Thank you. Did you also office at the    10 Pentagon, sir?</p> <p>11 A. I had two staffs, two offices; one here in    12 downtown D.C., one in the Pentagon. Most times, I    13 would do two or three visits back and forth during,    14 actually, a day.</p> <p>15 Q. And you did that routinely?</p> <p>16 A. Mainly stayed in Washington on Mondays and    17 Fridays. I'm a muddy boots guy that likes to be on the    18 ground. So almost every Tuesday to Thursday, for four    19 years, I traveled.</p> <p>20 Q. Okay. So you were -- when you became the    21 chief of engineers in May of 2016, had the -- the    22 issues surrounding the -- the Waters of the United    23 States rulemaking that was developed in 2015, had that    24 whole experience already occurred, the Corps' position    25 on the rulemaking and EPA's position? Was that all</p>	<p>Page 25</p> <p>1 something that was a matter of friction within the    2 Corps --</p> <p>3 MS. ZILIOLI: Same objection.</p> <p>4 Q. (BY MR. SEBY) -- and the Army?</p> <p>5 A. I think -- without going into a lot of    6 detail, I think there was some degree of confusion,    7 based on Supreme Court decisions. And I think a lot of    8 the people in the Corps wanted to be able to make sure    9 that it was cleared up. Now, regardless of what that    10 meant with respect to, what does that mean, we just    11 don't like to work in an ambiguous environment. I    12 think at some point the lack of clarity caused our    13 people to be in a position to have to make decisions    14 which were probably judged several different ways.</p> <p>15 Q. Yeah. Okay. Understand. Did part of    16 your responsibilities as chief of engineers involve    17 serving as a liaison of sorts with other federal    18 agencies?</p> <p>19 A. Not necessarily in a description of    20 duties. I felt it incumbent on the Corps to really    21 almost serve as the federal engineer at certain times.    22 So there were times when the Corps had capabilities    23 that no one else in the federal government could do.    24 For instance, we did a lot of emergency management    25 work, so we were an unbelievable partner with FEMA in</p>

July 26, 2022

<p style="text-align: right;">Page 26</p> <p>1 the big storms of '17 and '18. We ended up doing a lot    2 of work with Customs and Border Patrol, a lot of work    3 with the NEXUS administration.</p> <p>4 But it was not necessarily a task that was    5 given to me. It was much more that we had a    6 capability, and we were -- we wanted to continue to be    7 able to provide both the taxpayers and the    8 Administration the best engineering advice possible.</p> <p>9 Q. Sure. Okay. So you worked with those    10 agencies that you mentioned. Did you interact with the    11 Department of the Interior in any respects?</p> <p>12 A. Not specifically. There were different    13 things that happened on my four years where I might    14 have had more involvement. But I would say that the    15 Department of the Interior was much further down on the    16 list versus the Veterans Administration or CBP.</p> <p>17 Q. Okay. But you did interact with them to    18 some degree, you're just telling me that on a -- on a    19 hierarchy scale, it was less than others?</p> <p>20 A. I would concur with that.</p> <p>21 Q. Okay. All right. With respect to the    22 Department of the Interior, do you recall interacting    23 with an individual who held the title Assistant    24 Secretary of the Department of the Interior,    25 Mr. Michael Connor?</p>	<p style="text-align: right;">Page 28</p> <p>1 House Civil Works Committees. So a good example is,    2 some of the representatives from North Dakota, I got to    3 know quite well.</p> <p>4 Q. For -- for example, who -- what    5 individuals are you referring to?</p> <p>6 A. I think in North Dakota -- and this    7 relationship evolved, if you're talking '16 and '17, I    8 was aware of Senator Hoeven. But it really came to the    9 later years when we were doing a couple big projects in    10 North Dakota, where he was probably one of the top    11 seven or eight senators that I knew, especially when I    12 left here in 2020.</p> <p>13 Q. Sure. And you said you met with --    14 occasionally with governors of states where the Corps    15 had project work. Do you recall meeting with the    16 governor -- governor or governors of the State of North    17 Dakota?</p> <p>18 A. I don't think I ever did, but there could    19 have been a time where we had some big event in -- I    20 think Fargo-Moorhead was the billion-dollar project we    21 were doing, where I think there might have been a    22 ribbon-cutting or something. But it was not something    23 that I necessarily remember. I don't even remember who    24 the first governor of North Dakota was. I think the    25 person changed. But I don't have any specific</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I don't believe I ever worked with him or    2 was really aware of him at that time.</p> <p>3 Q. Never?</p> <p>4 A. I don't believe I knew who he was.</p> <p>5 Q. Okay. How about the Secretary of the    6 Interior, Sally Jewell? Did you interact with her in    7 any regard?</p> <p>8 A. I don't believe I ever interacted with    9 her, either.</p> <p>10 Q. How about Mr. Larry Roberts of the    11 Department of the Interior?</p> <p>12 A. I might have heard the name, but I    13 couldn't tell you what he did, and I don't think I ever    14 talked to him.</p> <p>15 Q. Okay. How about in your capacity as chief    16 of engineers, did you interact with any of the state    17 governments or representatives where the Corps' mission    18 was -- was ongoing?</p> <p>19 A. So because I traveled a lot, wherever we    20 were doing big projects, many, many times I would fly    21 in to see a governor, a governor's staff. I think,    22 more importantly, when you talk about representatives,    23 I was the chief of engineers. I had to testify several    24 times in Congress. As a result, I got to be very, very    25 close to almost every member of both the Senate and the</p>	<p style="text-align: right;">Page 29</p> <p>1 involvement with the two -- with the governors of North    2 Dakota.</p> <p>3 Q. Okay. And that was true during the    4 DAPL -- the period of the DAPL protests, approximately    5 August of 2016 through, say, March or April of 2017?    6 You'd never met or spoke with, on the phone, either    7 governor of the State of North Dakota?</p> <p>8 A. I don't believe so. There were times    9 where I think some members of the Administration were    10 working as a team, there could have been a time; or    11 there might have been a VTC or a call, I might have    12 been in a room. But I don't -- most of the engagements    13 I had with governors I remember. I don't even remember    14 specifically meeting or who that person was.</p> <p>15 Q. Okay. Okay. Now, I want to talk about    16 the DAPL protests themselves; again, the August 2016    17 time period through mid- -- mid-year 2017. Were you --    18 were you confident, as chief of engineers, that the    19 information you were receiving was -- about the    20 protests and the situation in North Dakota -- that you    21 were receiving was timely, accurate, and complete?</p> <p>22 A. I had confidence that my team was telling    23 me their -- what they saw on the ground. But I have to    24 be honest with you, after 41 years in the military as a    25 general, I always like to verify. I always like to</p>

July 26, 2022

<p>Page 30</p> <p>1 question and double-check. So I'm not sure that every    2 single thing I always heard was necessarily true. It    3 was probably what my team felt was their perception of    4 what was happening on the ground.</p> <p>5 Q. Okay. And that -- I appreciate that. Are    6 you thinking of anything in specific with respect to    7 the -- the DAPL protest-related events that cause you    8 to say that, or is that just a general observation?</p> <p>9 A. It's just a general observation of always    10 checking and double-checking.</p> <p>11 Q. Yeah, sure. Especially with a lot of    12 moving parts, right?</p> <p>13 A. There's always a lot of things that you    14 know, and there's normally a lot of things you don't    15 know.</p> <p>16 Q. Yeah, yeah. General, what sources of    17 information did you rely upon for updates on the DAPL    18 protests in the state of North Dakota?</p> <p>19 A. I don't remember, exactly. We had a    20 series of weekly SITREPS that every district, those    21 colonel-level districts, sent to their generals. I    22 never saw those district reports, because there were 43    23 of them. My division commanders would then send me a    24 SITREP, some two- or three-page paragraph of actions    25 that was happening. They would send me routine updates</p>	<p>Page 32</p> <p>1 town.</p> <p>2 Q. Right. Okay. And General Jackson's    3 reporting duty or -- to -- to Ms. Darcy was -- was the    4 same as yours, sort of a collaborative relationship, or    5 was it a -- a boss relationship?</p> <p>6 A. I'm not sure that either one of those    7 would be right. The bottom line is, I would call it    8 more of a partnership. If there was ever a time where    9 there was a conflict, we always strived to somehow    10 defuse a conflict. But most of the time when the    11 military, working with a civilian leadership, we take    12 their guidance. But they normally give us concepts of    13 what they'd like to do, but the execution is normally    14 administered by the military.</p> <p>15 Q. Sure. Did you ever direct that the Corps    16 should independently monitor the DAPL protests    17 occurring on Corps of Engineers property?</p> <p>18 A. So I don't understand the question. What    19 do you mean "independently monitor"?</p> <p>20 Q. Versus rely upon other sources of    21 information. Did you -- did you ever insist that the    22 Corps place monitors to firsthand observe the protests?</p> <p>23 A. I certainly never directed that. I had --    24 I know that another key name here is Colonel John    25 Henderson, who was the district commander of the Omaha</p>
<p>Page 31</p> <p>1 every -- every other week. General Scott Spellmon was    2 the division commander of the Northwest Division, so    3 I'm assuming he continued to send me updates, like he    4 would every two weeks. And at some given point, as an    5 issue either evolved and got resolved, or at some point    6 if it got more intense, then that would trigger either    7 a question from me or my staff.</p> <p>8 General Jackson was on those SITREPS. And    9 because I was working a very, very hectic pace, I tried    10 to triage everything we were doing and delegate and    11 empower to my team the ability to resolve, at the    12 lowest level, to be able to put things where they    13 needed to be. So most of the time my division    14 commanders or my generals here in the headquarters were    15 the day-to-day go-to people to provide updates.</p> <p>16 Q. Sure. And when you were walking me    17 through the -- the hierarchy chart of -- of -- that you    18 described, when you were talking about Major General    19 Jackson, I just want to ask a question about that.    20 Major General Jackson was a direct report to you or    21 Ms. Darcy?</p> <p>22 A. All the generals reported direct to me.    23 So he was a direct report to me, was here in my    24 headquarters. I saw him two or three times,    25 personally, every Monday and Friday when I was here in</p>	<p>Page 33</p> <p>1 District. He was probably the most visible and was on    2 the ground. So when you talk about monitoring, he    3 definitely had insights, both of the people and of the    4 issues and of the actions. So I always was very    5 attuned to what Henderson's perceptions were of what    6 was happening.</p> <p>7 But I don't think -- we never wanted to do    8 things independent. We always strived to be a federal/    9 state integrated team, where everybody understands    10 others' authorities and we try to work as best we can    11 as a collaborative body.</p> <p>12 Q. Thank you. And what -- do you recall    13 directing General Spellmon or Colonel Henderson to do    14 anything specific with regard to that striving to be a    15 federal/state team with regards to the North Dakota    16 DAPL protests?</p> <p>17 A. I'm not sure that I remember any specific    18 actions, but -- and I might have alluded to this. Most    19 of the time, I did not get involved in day-to-day    20 activities. Probably 80 percent of the Corps' actions    21 that happened were executed inside the districts and    22 resolved inside the districts. Whatever the 50 percent    23 that were not done by districts, were probably resolved    24 by the different divisions. So that allowed me to --    25 instead of worrying about a hundred percent of issues,</p>

July 26, 2022

<p style="text-align: right;">Page 34</p> <p>1 I was able to focus on really the strategic direction    2 where the Corps was going. But then when there was a    3 tactical issue, which DAPL started out at, then I was    4 able to direct my focus at those very, very few things    5 which needed the commander to get involved.</p> <p>6 Q. Okay. And are -- are you aware that    7 the -- whether the -- the Corps of Engineers manages a    8 project in the state of North Dakota on the Missouri    9 River in the southeastern part of the state?</p> <p>10 A. I am aware.</p> <p>11 Q. And is it correct that the lands and    12 project that you're referring to being aware of is    13 called the Oahe Project?</p> <p>14 A. It is. But it's important to point out    15 that I've never been there. And in the last six years,    16 I've not seen a map. So anything with respect to the    17 orientation or the physical layout is something I'm not    18 very knowledgeable of.</p> <p>19 Q. Okay. But is it correct that your    20 understanding is that the Corps of Engineers manages    21 that -- that property and project on behalf of the    22 United States Government?</p> <p>23 A. That's correct.</p> <p>24 Q. Does anyone else manage or control that    25 project, in addition to the Corps?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. Do you agree with me that the Oahe    2 Project is a flood control project along the Missouri    3 River?</p> <p>4 A. A lot of our projects have five or six    5 different purposes, so I can't answer that. I think    6 the primary reason was a flood control project, but    7 there are several of our reservoirs that actually have    8 four or five authorized purposes. And I don't know the    9 details of that particular project.</p> <p>10 Q. Okay. Are you aware that there is a -- a    11 hydropower function to the Oahe Dam that's part of the    12 Oahe Project?</p> <p>13 A. I'm not aware of that. It doesn't    14 surprise me, though.</p> <p>15 Q. Okay. And, of course, there's    16 recreational aspects to the Oahe Project as well that    17 are ancillary to flood control and power generation    18 purposes. Is that a fair understanding as well?</p> <p>19 A. I was aware that there was a recreation    20 function, only because as this process evolved,    21 obviously we had park rangers that were involved. So    22 when I heard the word "park rangers," we only put our    23 park rangers normally where there's a recreational    24 authorization.</p> <p>25 Q. And what does a park ranger duty mean to</p>
<p style="text-align: right;">Page 35</p> <p>1 A. I don't know that. There are times where,    2 on some of our federal areas, we might lease parts of a    3 recreation area to a concession; that we might allow    4 local and state organizations to come and do things    5 like upgrade trails and other stuff. So I'm not -- it    6 wouldn't be fair to probably say that we solely    7 organize it, but most of the time we have partnering    8 agreements with other entities. So sometimes it might    9 be where we seek or receive assistance from either    10 state or local officials or organizations.</p> <p>11 Q. And do you know that was the case with    12 regard to the Oahe Project or -- or not?</p> <p>13 A. I don't know that.</p> <p>14 Q. Okay. Do you recall the -- the function    15 and purpose of the Oahe Project?</p> <p>16 A. I don't know exactly what those functions    17 are. Every one of our federal lands has different    18 authorities. Some are flood control; some are based on    19 when you have a water control structure, like a dam, to    20 be able to control water for either hydro or for    21 environmental reasons. Most of those rec areas are    22 associated with a Civil Works project that had been    23 constructed earlier. And as I recall, I think that's    24 what caused the actual lake or the water structure to    25 be formed.</p>	<p style="text-align: right;">Page 37</p> <p>1 you, sir, generally speaking?</p> <p>2 A. I'm going off my gut here, but mainly it's    3 a trained civilian who allows the project to be done    4 under authorized purposes; anywhere from managing    5 the -- the operations that are performed, like    6 recreational services, taking care of the environment.    7 There's probably some type of capability of making sure    8 that we have nature, Boy Scout troops get tours. Very,    9 very similar to, like, I think the average American    10 would think of as a U.S. Park Service park ranger.</p> <p>11 Q. Okay. Would that include making sure    12 that -- that rules are followed on -- on Corps property    13 and that peaceful enjoyment of the property for all    14 lawfully using it would -- would ensue?</p> <p>15 MS. ZILIOLI: Objection to the extent it    16 calls for a legal conclusion.</p> <p>17 Q. (BY MR. SEBY) As a practical matter?</p> <p>18 A. I would say that that's generally correct.    19 I have never been a park ranger, and I'm not    20 necessarily an expert on the duties and functions of a    21 park ranger. But normally, yes, we want -- the Corps    22 is an institution where we want to continue to be able    23 to make sure that we have accountability and the rules    24 are followed.</p> <p>25 Q. Yeah. That's sort of a central -- central</p>

July 26, 2022

<p style="text-align: right;">Page 38</p> <p>1 value of the Corps and its properties and purposes, 2 right?</p> <p>3 A. I think that taking care of our 4 responsibilities is something that we hold very dear to 5 where we're at. So I would say, generally, yes.</p> <p>6 Q. Okay. Do you know whether the -- the 7 United States ever delegated responsibility for the use 8 or management of the Corps Oahe Project lands to the 9 State of North Dakota?</p> <p>10 MS. ZILIOLI: Objection, legal 11 conclusion.</p> <p>12 A. I don't know that.</p> <p>13 Q. (BY MR. SEBY) Okay. How about to the 14 Standing Rock Sioux Tribe or any other tribe?</p> <p>15 MS. ZILIOLI: Objection, legal 16 conclusion.</p> <p>17 A. I don't know that, either.</p> <p>18 Q. (BY MR. SEBY) Okay. To any of the 19 protesters?</p> <p>20 MS. ZILIOLI: Same objection.</p> <p>21 A. I know at one point there was a standing 22 use permit. So I'm not sure that that answers your 23 question. But I know that there was some ability that 24 was being worked to be able to allow freedom of speech. 25 So that -- I'm not sure that answers your question, but</p>	<p style="text-align: right;">Page 40</p> <p>1 certainly assume that my district sent to the division 2 that trigger. And inside of my headquarters, there's 3 actually a command post. I call it the Emergency 4 Operations Center, EOC, that normally gathers that 5 data. And a lot of times in our Monday morning 6 meeting, I would, then, have been briefed on it. Now, 7 if Labor was a Monday, then it was probably the next 8 Tuesday. But I probably either got an email or a 9 briefing on what had transpired over the weekend.</p> <p>10 Q. I see. And what did you do after you 11 received that first indication that protesters were 12 accessing and using Corps of Engineers property?</p> <p>13 A. I don't remember that. I would normally 14 have asked my two-star, General Jackson, who was 15 probably sitting at the table, "Okay. What does that 16 mean? What's the plan? What are we going to do? And 17 do you need any help?"</p> <p>18 Most of the time, like I said earlier, I 19 try to delegate and empower. And unless they either 20 don't have the resources or they don't have the 21 authorities, I let them execute what they feel is the 22 best-laid-out plan.</p> <p>23 Q. Yeah. Do you know why DAPL-related 24 protesters chose to enter onto and stay on Corps of 25 Engineers property?</p>
<p style="text-align: right;">Page 39</p> <p>1 I -- I don't want to say no. I know there was some -- 2 some issue there.</p> <p>3 Q. (BY MR. SEBY) Yeah. Do you recall, 4 General Semonite, when you first learned that 5 protesters were physically present on Corps of 6 Engineers-managed lands in North Dakota?</p> <p>7 A. I think it's sometime around Labor Day 8 weekend of 2016, when I -- I think there was one of the 9 first occurrences of something. But I'm not sure 10 whether that was a demonstration or, you know, a march 11 or what it was. But I think it's sometime around Labor 12 Day.</p> <p>13 Q. Yeah. Do you recall how you learned that, 14 sir?</p> <p>15 A. So, I don't; but normally, we have a 16 system in the Army that establishes critical 17 information requirements. It's documented. It's 18 actually on one page, and it says, if someone dies in 19 the Corps, then you notify and send up a flash report 20 to leadership to say, somebody -- one of our -- one of 21 our team died. If there's a specific thing where we 22 think we're going to be in national news, the district 23 is required to send something up.</p> <p>24 So if it was something where it was a 25 protest or something that was relevant, then I would</p>	<p style="text-align: right;">Page 41</p> <p>1 MS. ZILIOLI: Objection, speculation.</p> <p>2 A. So I don't know any specific details, but 3 I think it was because of their objection of putting 4 the pipeline underneath the waterway.</p> <p>5 Q. (BY MR. SEBY) The -- the crossing of the 6 Waters of the U.S.?</p> <p>7 A. That is correct.</p> <p>8 Q. Yeah. Do you have a thought, though, why 9 they chose Corps of Engineers property and not some 10 other property?</p> <p>11 MS. ZILIOLI: Objection; assumes facts not 12 in evidence, and speculation.</p> <p>13 A. I don't know that.</p> <p>14 Q. (BY MR. SEBY) Okay. Do you know, was -- 15 was anyone inviting or encouraging or calling for 16 protesters to come and stay on the Corps property?</p> <p>17 A. I can't -- I can't comment on anybody 18 external to the Corps. Certainly, the Corps did not do 19 that. There could -- there's a lot of players in this 20 equation. There could have been other elements in, I 21 don't know, America that felt that this was an 22 appropriate gesture and could have then made 23 recommendations accordingly; for instance, different 24 types of Native American tribes, at some point there 25 were people from Hollywood involved. So I don't know</p>

July 26, 2022

<p style="text-align: right;">Page 42</p> <p>1 who recommended what. I just know that it did not come 2 from the Corps.</p> <p>3 Q. Do you agree with me that you -- you 4 learned around Labor Day that people were -- protesters 5 were -- were entering on and staying on Corps property?</p> <p>6 A. I'm not sure I know if they were 7 physically on the property. I know that there was 8 definitely some type of -- I'm not sure "altercation" 9 is the -- is the right word -- some type of an incident 10 that happened there, either on property or external. 11 But I don't physically know -- I don't know if they 12 were physically on the property at that time. They 13 very easily could have been.</p> <p>14 Q. Okay. Do you agree that at some point 15 thereafter they were -- they did enter onto and stay on 16 Corps property?</p> <p>17 A. So I know that this continued to evolve 18 and the numbers continued to get higher. And as a 19 result, we continued to get more worried.</p> <p>20 Q. As the numbers grew higher and the -- the 21 presence of people on Corps property increased, were 22 you aware that those people were using the Corps 23 property as a base of sorts and would go off of the 24 Corps property to private property in the vicinity?</p> <p>25 MS. ZILIOLI: Objection, assumes --</p>	<p style="text-align: right;">Page 44</p> <p>1 the Corps property?</p> <p>2 MS. ZILIOLI: Same objection.</p> <p>3 A. So I have no knowledge of that.</p> <p>4 Q. (BY MR. SEBY) Okay. Okay. Are you 5 aware, sir, how the Corps of Engineers administers the 6 public use of Corps property for recreational 7 activities? What -- what -- what form of -- of rules 8 and regulations and administration of those rules does 9 the Corps use to manage its property?</p> <p>10 MS. ZILIOLI: Objection to the extent it 11 calls for a legal conclusion.</p> <p>12 A. So the Corps has hundreds of publications. 13 We pride ourselves on having systems in place. So 14 while I don't know the regulation -- the recreation 15 regulations very well, I know that as I have visited 16 many of these places, there are certain things that 17 involve putting boats in, fishing contests, people 18 going swimming, hunting. We have rules for all that. 19 So most of the time there is some documented regulation 20 that those park men -- those park rangers try to use -- 21 they use to administer the proper use of those 22 facilities. But I probably don't have anywhere near 23 the level of detail that you're looking for.</p> <p>24 Q. (BY MR. SEBY) No -- no problem. But 25 you're aware that the Corps of Engineers -- or are you</p>
<p style="text-align: right;">Page 43</p> <p>1 objection, assumes facts not in evidence.</p> <p>2 Q. (BY MR. SEBY) I'm asking that -- whether 3 you knew that, sir?</p> <p>4 MS. ZILIOLI: Same objection.</p> <p>5 A. So I don't have the details on that. I 6 know that there was one portion, which I believe was 7 Corps property, which was leased out to some farmer for 8 grazing. I'm -- I'm imagining what you stipulate could 9 have happened on private property. I just don't have 10 the personal knowledge of where exactly they went and 11 what their target of operation was.</p> <p>12 Q. (BY MR. SEBY) Okay. Are you aware that 13 individuals residing on Corps property left the Corps 14 property to travel to public roads and bridges?</p> <p>15 MS. ZILIOLI: Objection, assumes facts not 16 in evidence.</p> <p>17 A. I know that there were protesters on 18 public roads and bridges. It could have very easily 19 been that they did come off of Corps property, some of 20 them might have come from other places. I just don't 21 know the details.</p> <p>22 Q. (BY MR. SEBY) Okay. How about with 23 respect to the same residents on Corps property 24 traveling from the Corps property to the cities of 25 Bismarck or Mandan, North Dakota and then returning to</p>	<p style="text-align: right;">Page 45</p> <p>1 aware that the Corps of Engineers has a title in the 2 Code of Federal Regulations, known as Title 36, that 3 spells out the permissible use and manner of use for 4 Corps property and the types of permissions that are 5 necessary to conduct those activities?</p> <p>6 A. I'm vaguely aware of Title 36. I probably 7 became aware of it more when we were in the middle of 8 September '16 and we were faced with some of these 9 questions as, what were our authorities and what were 10 our options when it came to the ability to keep good 11 order and discipline. But I probably couldn't quote 12 you anything with respect to what's in Title 36.</p> <p>13 Q. Right. General, is it fair to say that 14 that DAPL protest-related situation was your 15 introduction to the -- the Corps regulations, 16 authorities if you will, for the use and management of 17 its properties?</p> <p>18 A. I think it's fair to say that it was the 19 first time that we probably had been faced with an 20 issue where it wasn't easy to resolve. There were 21 other times where we might have to worry about -- at 22 one point we had people that were -- somebody committed 23 suicide in one of the -- you know, the parks; so what 24 were the authorities there on calling police. There 25 were other times where we might find people stealing</p>

July 26, 2022

<p>1 lumber or other things.</p> <p>2 So, I was the division commander for six</p> <p>3 years, I was the deputy for two years, so I'm not sure</p> <p>4 it's fair to say I'd never been involved in it. But</p> <p>5 most of the times, none of those had to do with willful</p> <p>6 disobedience on Corps land.</p> <p>7 Q. Okay. And was that -- unlike the DAPL</p> <p>8 experience, are you -- are you contrasting your -- your</p> <p>9 past experience with your experience in the DAPL</p> <p>10 protests?</p> <p>11 A. I'm not sure what you mean.</p> <p>12 Q. I was -- I was just trying to understand</p> <p>13 the choice of words that you used, civil disobedience</p> <p>14 and that kind of thing. Were you suggesting that that</p> <p>15 was occurring during the DAPL protests on the Corps</p> <p>16 land?</p> <p>17 MS. ZILIOLI: Objection, misstates</p> <p>18 testimony.</p> <p>19 Q. (BY MR. SEBY) I'm asking you just to</p> <p>20 clarify, so I understand.</p> <p>21 A. Yeah. It was my understanding, as this</p> <p>22 evolved into September, that we were in a scenario</p> <p>23 where we had willful disobedience of certain functions</p> <p>24 that were against the way we wanted to manage that</p> <p>25 land.</p>	<p>Page 46</p> <p>1 that issue, who made the decision to pull the Corps'</p> <p>2 consideration from the normal process, sir, that you</p> <p>3 mentioned concerning the Standing Rock Sioux Tribe's</p> <p>4 special use permit application, up to the Corps</p> <p>5 headquarters?</p> <p>6 MS. ZILIOLI: Objection, assumes facts not</p> <p>7 in evidence.</p> <p>8 A. So I'm not sure I knew that that happened.</p> <p>9 It doesn't necessarily surprise me. There were -- we</p> <p>10 always try to, again, align as a federal government.</p> <p>11 And there could have very easily been times where the</p> <p>12 discussions between Ms. Darcy's office and General</p> <p>13 Jackson might have recommended that some of these</p> <p>14 actions be elevated to a more strategic level. So it</p> <p>15 doesn't surprise me that happened, but I'm not sure I</p> <p>16 was aware that happened.</p> <p>17 Q. (BY MR. SEBY) Do you know, sir, who made</p> <p>18 the decision to involve others in the Obama</p> <p>19 Administration with respect to the -- to the special</p> <p>20 use permit sought by the Standing Rock Sioux Tribe,</p> <p>21 outside the Corps?</p> <p>22 MS. ZILIOLI: Objection, assumes facts not</p> <p>23 in evidence.</p> <p>24 A. I know that there was a lot of interest by</p> <p>25 a lot of federal agencies as to what was occurring on</p>
<p>1 Q. (BY MR. SEBY) Would that include</p> <p>2 disobedience with directives by the Corps to those</p> <p>3 people on Corps property?</p> <p>4 MS. ZILIOLI: Objection to the extent it</p> <p>5 calls for a legal conclusion.</p> <p>6 A. I think they got much, much more evident</p> <p>7 in a couple months later. I still think this was an</p> <p>8 evolving situation in September, so I would not</p> <p>9 necessarily equate it as a -- as a crisis in September.</p> <p>10 It was something we were concerned about.</p> <p>11 Q. (BY MR. SEBY) Okay. Are you aware that</p> <p>12 the Standing Rock Sioux Tribe sought a special use</p> <p>13 permit from the Corps to conduct a protest on --</p> <p>14 against the Dakota Access Pipeline on Corps of</p> <p>15 Engineers property?</p> <p>16 A. I was aware that there was a request and,</p> <p>17 I believe, initial actions to be able to set the</p> <p>18 conditions for the approval of a special use permit.</p> <p>19 Q. Did you have any involvement in the Corps'</p> <p>20 consideration of the special use permit application</p> <p>21 submitted by the Standing Rock Sioux Tribe?</p> <p>22 A. Not at all. I believe those permits are</p> <p>23 approved by the district commander. In this case, that</p> <p>24 would have been Colonel Henderson.</p> <p>25 Q. And -- thank you. And do you know, on</p>	<p>Page 47</p> <p>1 the ground. So while I didn't personally talk to any</p> <p>2 of these people, I'm very aware that DOJ was involved,</p> <p>3 DOI was involved, DIH was involved, other elements.</p> <p>4 And so what we don't ever want to do is either</p> <p>5 embarrass the Administration or work outside the intent</p> <p>6 of the Administration.</p> <p>7 So when I felt that there was ever a time</p> <p>8 we were going to do something, most of the time we do</p> <p>9 in the Army kind of what's called an ask-it check; go</p> <p>10 to senior leaders and say, "I'm about ready to do</p> <p>11 something. Do you have any issues with that?"</p> <p>12 And this is where we wanted to make sure</p> <p>13 that we acted as an aligned Administration team. And</p> <p>14 so at -- somewhere in the middle of September, we were</p> <p>15 doing a lot of that coordination with echelons above my</p> <p>16 level; mainly, Ms. Darcy and other probably political</p> <p>17 leaders, but also maybe staff in those other agencies,</p> <p>18 including the Department of the Army.</p> <p>19 Q. (BY MR. SEBY) Yeah. Were you ever told</p> <p>20 that the Corps believed that the Standing Rock Sioux</p> <p>21 Tribe's special use permit application initially lacked</p> <p>22 required information for approval?</p> <p>23 A. I don't believe I was ever told that. I</p> <p>24 do believe at some point, while the intent was to issue</p> <p>25 the permit, I believe remembering that there were some</p>

July 26, 2022

<p>Page 50</p> <p>1 conditions of that permit that were not met. I think    2 it mainly had to do with -- something with insurance    3 and maybe something else. But I don't know if it    4 actually was a valid permit; because while I think it    5 was our intent to issue it, I'm not sure that those    6 conditions were carried out as -- as stipulated in the    7 permit, if you understand what I'm saying.</p> <p>8 Q. I think I do. Do you know what period of    9 time that circumstance evolved, when you realized that    10 was the case?</p> <p>11 A. I believe this was all in about the same    12 time, early September. I think it's important to also    13 inform you that there -- there was a very, very strong    14 desire, both on the Administration and even in the    15 Army, to continue to deescalate this, to not have a    16 conflict that was going to continue to get worse and    17 worse. So either Colonel Henderson -- or it might have    18 been the chief, Archambault, I think his name is,    19 basically said, let's have this standing use permit, so    20 that if the -- if the Native Americans are there and    21 we -- I guess you could almost say retroactively gave    22 them a permit, then, theoretically, they could be    23 allowed to be there under the parameters of certain    24 things, which were -- I think we were very concerned    25 about health, very concerned about safety. I think we</p>	<p>Page 52</p> <p>1 continued to get more violent. There were -- clearly    2 when it came to sanitary conditions, I know there was a    3 lot of issues there. And so at some point, I think it    4 got to the point where because they had not met their    5 end of the bargain, that's where the permit, I think,    6 continued to evolve in the next couple of months.</p> <p>7 Q. Yeah. So -- so you'll agree with me, sir,    8 that the -- there never actually was a final effective    9 in-place special use permit for the Standing Rock Sioux    10 Tribe to use and be on Corps property?</p> <p>11 MS. ZILIOLE: Objection, legal    12 conclusion.</p> <p>13 A. So I'm not sure I would say I disagree    14 with you. I would say that there were probably a    15 couple phases of this where, I think at some point, the    16 Tribe had to apply for it, and then we would basically    17 grant it, given these extra conditions. And at some    18 given point when those conditions were either not or --    19 intentionally not met or by default not met, then that    20 permit, in my understanding, was not necessarily a    21 legal binding permit and was, therefore, then,    22 reconsidered.</p> <p>23 Q. (BY MR. SEBY) Okay. I guess the question    24 is -- and I'm not asking for a legal conclusion -- but    25 the permit was offered by the Corps to the Tribe,</p>
<p>Page 51</p> <p>1 also were getting very concerned at this point about    2 construction or permanent presence.</p> <p>3 So I think that's where the standing use    4 permit was kind of an innovative tool to be able to    5 provide some degree of top cover, so that the Native    6 Americans -- this all went back to free speech -- so    7 that the Administration could support the Native    8 Americans' desire to be able to exercise their First    9 Amendment rights.</p> <p>10 Q. And that -- that was the hope, is what    11 you're saying? That was the intent?</p> <p>12 A. I think that was the intent, to be able to    13 somehow find a -- and I'm going to probably use this    14 analogy a couple of times -- but this is a -- this was    15 a incident that didn't necessarily have a plain    16 solution. So every time we looked at options, we    17 always tried to pick the best of the bad options.</p> <p>18 Q. Understand. And that intent, how did that    19 intent square with the reality that -- I believe you    20 mentioned that the -- the permit conditions were never    21 actually met by -- by the permittee, which was the    22 Standing Rock Sioux Tribe. How did that square with    23 the intent?</p> <p>24 A. Well, I don't think it met the intent.    25 The bottom line is, I think that the -- the protests</p>	<p>Page 53</p> <p>1 correct?</p> <p>2 A. I thought it was requested by the Tribe    3 and -- and willing to be supported by the Corps. So    4 that's a little bit different way of saying it.</p> <p>5 Q. Yeah. And I -- I -- I agree that the    6 Tribe sought the permit. But they applied, right? And    7 it's just like you apply for a driver's license. And    8 then the Corps gave -- tendered a permit, an unsigned    9 permit, to the Tribe and said, "You need to sign this    10 and you need to meet these conditions, and then we'll    11 countersign and then you have an effective permit." Do    12 you know whether that happened?</p> <p>13 A. So that basically sounds like the process,    14 but I'm not sure I know what order the signatures were    15 there. You might be correct. It might have been in a    16 different order. But basically, I think what you're --    17 what you're summing up is relatively accurate.</p> <p>18 Q. Did you ever see a signed, by Colonel    19 Henderson or other Corps official, special use permit?</p> <p>20 A. I never did.</p> <p>21 Q. Okay. Were you told there was one?</p> <p>22 A. I'm pretty sure I was told that the    23 process was underway. I don't know, at the time, if I    24 was fully aware that the permit conditions had not been    25 met. So I could have been under the impression that</p>

July 26, 2022

<p style="text-align: right;">Page 54</p> <p>1 the permit was working or okay, but I'm not sure I had    2 that level of fidelity to understand whatever these    3 insurance-embodied requirements were.</p> <p>4 Q. Okay. And you mentioned earlier,    5 sir, the -- the free speech rights of the Native    6 Americans. How did that square with the fact that the    7 protesters on Corps land were not uniquely Native    8 Americans?</p> <p>9 A. So I'm not sure I understand. I think the    10 free speech rights would imply to any American, be they    11 Native Americans or non-Native Americans. And if, in    12 fact, there were non-Native Americans there, our    13 obligation to continue to support that balance, I think    14 would still be honored.</p> <p>15 Q. In your experience with the Corps, prior    16 to being the chief, I believe you said you were a    17 division commander, correct?</p> <p>18 A. Six years --</p> <p>19 Q. Did you --</p> <p>20 A. Six years.</p> <p>21 Q. Six years as -- six years as division    22 commander. What -- what division was that, sir?</p> <p>23 A. The first three years, 2006 to 2009, it    24 was called the North Atlantic Division; Virginia to    25 Maine, Europe, and Africa. '09 to '12, it was the</p>	<p style="text-align: right;">Page 55</p> <p>1 watch; I just can't validate, one way or the other. I    2 never personally did anything to do with a special use    3 permit that involved free speech.</p> <p>4 Q. Okay. Or -- or not even involving a    5 special use permit, just the idea that you said -- or    6 one of your district commanders, when you were the    7 division chief. That would be the right way to say it,    8 sir, I think.</p> <p>9 A. Correct. I -- I had nothing to do with    10 special use permits.</p> <p>11 Q. Okay. And you don't recall any being    12 granted for purposes of free speech demonstrations?</p> <p>13 A. I don't.</p> <p>14 MR. SEBY: Okay. All right. Sir, I'd    15 like to suggest we take a short break, Ms. Zilioli, for    16 ten minutes. It's been just over an hour. Let's do    17 that, please.</p> <p>18 MS. ZILIOLI: Sounds good.</p> <p>19 THE DEONENT: So probably one hour from    20 right now, then -- I mean, ten minutes from now? Top    21 of the hour?</p> <p>22 MR. SEBY: Ten minutes from now. So    23 the -- yes, top of the hour.</p> <p>24 THE DEONENT: Great.</p> <p>25 THE VIDEOGRAPHER: Going off the record.</p>
<p style="text-align: right;">Page 55</p> <p>1 South Atlantic Division; Louisiana to North Carolina,    2 and South America.</p> <p>3 Q. With respect to your tenure as -- as a    4 division commander in those two jurisdictions, did you    5 ever decree or grant the use of a Corps property as a    6 free speech effort?</p> <p>7 A. I don't believe I ever had any involvement    8 in it. When I was in the South Atlantic Division was    9 when the water wars of Florida, Georgia, and Alabama    10 were going. There was a lot of significant    11 environmental impacts. There were a lot of people that    12 were -- wanted to protest, to a degree, on how the    13 Corps managed those lands. I'm not sure that -- if    14 they were ever on Corps property, and I'm not sure we    15 ever did anything. But there were other times during    16 my career where I had seen people want to have a very,    17 I think, pronounced opinion of how the Corps was doing    18 business.</p> <p>19 Q. Yeah. But did anyone ask you or -- or did    20 you ever designate the use of Corps property as a free    21 speech zone in connection with any of your past    22 experiences?</p> <p>23 A. So again, those permits are approved at    24 the colonel level. We did 80,000 different types of    25 permits a year. That could have happened under my</p>	<p style="text-align: right;">Page 57</p> <p>1 The time is 3:49 p.m. UTC, 9:49 a.m. Mountain.    2 (Recess, 9:49 a.m. to 10:01 a.m. MDT.)</p> <p>3 THE VIDEOGRAPHER: We're back on the    4 record. The time is 4:01 p.m. UTC, 10:01 a.m.    5 Mountain.</p> <p>6 Q. (BY MR. SEBY) General Semonite, we're    7 back after a short break. And just -- just before the    8 break, we were talking about the free speech concept    9 for use of the Corps property. I wanted to back up.    10 Do you -- I know you said you had never been to the    11 Oahe Project. Did you become familiar with the -- the    12 Corps property through maps and others telling you    13 about it; the layout of the land, so to speak?</p> <p>14 A. I don't believe I did early on, September.    15 At some point, when it got to the point where we were    16 worried about the impending flood and the water levels    17 and the ramifications of a water increase in certain    18 areas, as normal, I had the team come in and lay out    19 for me the hydrographic issues. And I think at some    20 point, and when or if, I think there was a couple times    21 when some of these road junctions or bridges got to be    22 flashpoints. I certainly wanted to understand the    23 orientation of those as to how it got done. So yes,    24 over time I continued to get more and more involved.</p> <p>25 Q. Do you recall directing your staff within</p>

July 26, 2022

<p style="text-align: right;">Page 58</p> <p>1 the Corps to develop and provide you with maps    2 indicating where protesters were encamped on Corps    3 property?</p> <p>4 A. I don't, but it certainly sounds like    5 something I would do. I want to make sure that at some    6 point as this gets to be more and more intense, that I    7 have a good situational awareness of what's happening    8 on the ground.</p> <p>9 Q. Yeah. Do you recall the -- the basic    10 geographic feature of the Cannonball River running    11 approximately east/west on the -- the Corps property    12 that was part of the Oahe Project?</p> <p>13 A. So I know that -- a lot of discussions on    14 the north side and the south side of the Cannonball,    15 but I -- I probably couldn't draw you a diagram. But I    16 certainly know that there was differences in those two    17 geographies.</p> <p>18 Q. And what was the point of referencing    19 north of the Cannonball River and south of the    20 Cannonball River? Was that relative to denoting the    21 location of camps on Corps -- Corps property?</p> <p>22 A. I think Colonel Henderson referred to    23 those mainly when it came to where he was going to    24 allow the standing use permit. And then over time --    25 we can talk more about this later, but I think</p>	<p style="text-align: right;">Page 60</p> <p>1 A. As I recall, at some point -- and I think    2 it was later on, maybe November -- Colonel Henderson    3 did get worried about the north side. And in a manner    4 to try to move people out of the north, I think his    5 thought was to stand up this free speech zone so that    6 there would be more of a density on the south side.    7 Now, maybe that was in September. I don't have a real    8 clear recollection. But I do know that Colonel    9 Henderson thought the south side was a better place for    10 there to be any type of a consolidation point, free    11 speech zone.</p> <p>12 Q. Would it surprise you, sir, that the free    13 speech area designated as such was the same as the    14 failed special use permit area?</p> <p>15 MS. ZILIOLI: Objection, assumes facts.</p> <p>16 A. So, I don't know that.</p> <p>17 Q. (BY MR. SEBY) Okay. Do you recall, sir,    18 that during the course of the -- the protest period,    19 August of 2016 through mid-2017, that the Standing Rock    20 Sioux Tribe and other tribes sued the Corps of    21 Engineers in the United States Federal Court with    22 regard to the decisions being made by the Corps    23 concerning the Dakota Access Pipeline crossing?</p> <p>24 A. I'm definitely aware that there was legal    25 action taken against us.</p>
<p style="text-align: right;">Page 59</p> <p>1 over time there was one of those areas, I believe it    2 was the north, that were more susceptible to water    3 rise. And there was also some, I think, difference in    4 where municipal facilities were and where -- the best    5 place to be able to allow the Native Americans to    6 reside, if there was a choice between one or the other.</p> <p>7 Q. Were there encampments on both the north    8 and south side of the Cannonball River on Corps    9 property?</p> <p>10 A. I don't know exactly where they were, but    11 I -- I tend to understand (sic) -- and again, six years    12 ago --</p> <p>13 Q. Sure.</p> <p>14 A. -- it probably does make sense that there    15 were encampments on both sides.</p> <p>16 Q. Okay. And do you recall where the special    17 use permit was -- was intended to apply?</p> <p>18 A. I don't. I guess I thought at one point    19 it might have been for both sides, but it could have    20 very easily been either one or the other.</p> <p>21 Q. Okay. And do you recall the Corps, at    22 some point, announcing the designation of a free speech    23 zone on the south side of the Cannonball River for,    24 quote, all who wished to protest the Dakota Access    25 Pipeline?</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Yeah. By the Standing Rock Sioux Tribe    2 and other tribes?</p> <p>3 A. And again, it might have been a    4 consolidation of tribes, it might have been several    5 different lawsuits, but I know that there definitely    6 was legal action where the Standing Rock were involved    7 in some manner, either by themselves or with others.</p> <p>8 Q. Sure, sure. And do you recall one    9 particular decision by a United States District Court    10 judge in Washington, D.C., where he denied an attempt    11 by the Standing Rock Sioux Tribe and other tribes,    12 acting together, seeking to obtain a preliminary    13 injunction against the Corps regarding the permits and    14 approvals the Corps had already issued to the Dakota    15 Access Pipeline developer?</p> <p>16 A. So I remember that happened. I am not    17 real familiar where the different court systems and    18 where the judge was. He could have been in D.C. I    19 don't know what circuit court or how that works, but I    20 know that there was a -- a decision made.</p> <p>21 Q. Does the name Boasberg, Judge Boasberg,    22 ring a bell?</p> <p>23 A. It definitely does.</p> <p>24 Q. Yeah. And I -- I'm talking about the    25 September 9th decision by Judge Boasberg denying the</p>

July 26, 2022

<p style="text-align: right;">Page 62</p> <p>1 Tribe's motion for preliminary injunction. The Corps    2 won. And the court found -- Judge Boasberg found that    3 the tribes did not demonstrate substantial likelihood    4 of success in challenging the Corps' actions. And the    5 reason that's -- that's of interest to my question is,    6 that same day, the Department of the Army, the    7 Department of Justice, and the Department of the    8 Interior issued a Joint Statement -- notwithstanding    9 the judge's order and decision and the Corps' victory,    10 those three departments issued a Joint Statement on    11 September 9th. Do you recall that?</p> <p>12 A. I remember that happened, yes.</p> <p>13 Q. Okay. Do you know who made decision for    14 the Department of the Army that is part of the    15 September 9th Joint Statement?</p> <p>16 A. I don't, but I imagine that was either    17 recommended by Ms. Darcy, the Assistant Secretary for    18 Civil Works, and that might have been a decision that    19 probably the Army General Counsel, the lawyers in the    20 Army, would have been -- embraced. And it might have    21 had to go to the Secretary of the Army. I don't know    22 whether Darcy was the decision-maker, but I know that    23 that was -- I'm not sure that was a surprise to us, but    24 I don't think that was something that we recommended    25 happen.</p>	<p style="text-align: right;">Page 64</p> <p>1 saying that you knew -- you or anyone in the Department    2 of the Army knew what that -- the basis or nature of    3 the decision was going to be, do you?</p> <p>4 A. No, I don't. But a lot of times in the    5 Army, I mean, we pride ourselves on always having a    6 plan on the shelf. If -- if there are times when we    7 anticipate some future actions, we don't want to    8 necessarily have to react to that. We just execute    9 whatever that plan is. And I think at some point after    10 the Labor Day weekend, I imagine some of those    11 discussions were to say, "If, in fact, a judge were to    12 execute this course of action, what should we do? And    13 let's figure out how to do it ahead of time." And    14 that -- that's conjecture on my part. So I'm just    15 trying to help you understand, but I don't know any of    16 that in detail.</p> <p>17 Q. Okay. And so you do not know that    18 the idea of having a contingent plan on the shelf    19 included that, well, if the judge rules in our favor    20 and we win, we're still going to issue a Joint    21 Statement that says, "Notwithstanding the court's    22 decision, we're going to pause and reconsider what we    23 did"?</p> <p>24 A. Yeah, that's correct.</p> <p>25 Q. Okay. Are you aware, General, that</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Do you recall recommending that they not    2 do it?</p> <p>3 A. I don't recall that, either. However, I    4 was worried, to a degree, what that would have meant to    5 future actions. In other words, what's the step ahead?    6 What's going to continue to evolve?</p> <p>7 Q. So does that mean, General Semonite, that    8 before that action was taken, that you were consulted    9 for your opinion on whether or not to do it?</p> <p>10 A. I don't remember being consulted. Again,    11 General Jackson was probably working this six or eight    12 hours a day. He might have certainly thought through    13 this and voiced any comments we had. I don't remember    14 any of the dialogue. I do know that -- I don't know    15 how we knew if -- or if we knew the judge was going to    16 make that decision. But I tend to think that they had    17 anticipated this, because it takes days, normally, for    18 those agencies to agree on something. And the fact    19 that -- it sounds like that joint press release, or    20 whatever it was, was the same day. So that must have    21 been perceived and concocted a couple days ahead of    22 time.</p> <p>23 Q. Are you saying that the -- while you --    24 while the judge did announce that that was the date    25 that he was going to issue his decision, you're not</p>	<p style="text-align: right;">Page 65</p> <p>1 General Spellmon and Colonel Henderson were surprised    2 and/or frustrated by the September 9th Joint Statement,    3 in that they were not aware of it and that they were    4 frustrated by the substance of it, which was to    5 announce a reconsideration of the decisions that    6 Colonel Henderson had already made?</p> <p>7 MS. ZILIOLO: Objection; assumes facts,    8 misstates evidence.</p> <p>9 A. So I'm not aware that they didn't have    10 knowledge ahead of time. I guess I would have thought    11 that that would have been coordinated. You said    12 Henderson and Spellmon, but I'm going to assume maybe    13 General Jackson had prior knowledge.</p> <p>14 Whenever we have one of our very, very    15 deliberate procedures that I trust and have executed --    16 and that was the analysis by Colonel Henderson --    17 either delayed, questioned, or even to give the    18 perception to the American people that there's a    19 challenge with our Corps decision-making process, I    20 certainly would have been frustrated. And so,    21 therefore, it doesn't surprise me that Henderson and    22 Spellmon were surprised. It's not normal that    23 Ms. Darcy would do something behind our back; but if    24 what you're saying is true, then that could have    25 happened.</p>

July 26, 2022

<p style="text-align: right;">Page 66</p> <p>1           Q. (BY MR. SEBY) You're not surprised that 2 she did something behind your back?</p> <p>3           A. There's times in the federal government 4 when people might do something that is not necessarily 5 the way you would have done it, but most of the time we 6 always get together ahead of time and everybody has the 7 ability to put their opinion in. And being good 8 soldiers, if a decision is going to go some way that we 9 might not like, we still drive on, especially when 10 it's -- it's the political arm of the Department of 11 Defense.</p> <p>12           Q. Yeah. And you mentioned something earlier 13 that -- that I wanted to come back to. I think when we 14 were talking about the hierarchy and the chain of 15 command, that you, thankfully, explained -- I 16 understand it -- you made a point that the -- the 17 military, the Army, is subservient to civilian control. 18 You -- you really emphasized that point, right?</p> <p>19           A. That's correct. And that's not, of 20 course, just the Army. It also applies at the 21 Department of Defense level; the Chairman and the Joint 22 Chiefs who work for the Secretary of Defense.</p> <p>23           Q. Right, right. And they all work for the 24 President, correct?</p> <p>25           A. They do.</p>	<p style="text-align: right;">Page 68</p> <p>1 like a tinder -- a tinderbox. I mean, we didn't want 2 to have the fire fueled here, so we were certainly 3 willing to do that.</p> <p>4           There is time, and as we talked, in the 5 next couple months after that, where there was a very, 6 very growing concern, both on my part and my staff's 7 part, that we were beginning to deviate from normal 8 established regulatory procedures.</p> <p>9           Q. (BY MR. SEBY) And what -- can you give me 10 an example or two of -- of that happening in the DAPL 11 protest context or DAPL -- I guess the consideration of 12 the easement, which was pending for quite some time 13 with Ms. Darcy and was called back by the September 9th 14 Joint Statement? Can you elaborate on -- on -- on that 15 consideration that you're raising; where there was a 16 growing concern, to use your word, of deviating from 17 normal established Corps regulatory procedure?</p> <p>18           MS. ZILIOLI: Objection, misstates 19 evidence.</p> <p>20           A. So it did not involve the protests or 21 really anything on the ground. So what I'm talking 22 about, the Corps is charged to be able to execute the 23 regulatory process in accordance with our rules and 24 procedures that are established in law. And so -- and 25 without making a -- a stupid analogy, the bottom line</p>
<p style="text-align: right;">Page 67</p> <p>1           Q. Yeah. And so when Ms. Darcy, the civilian 2 Assistant Secretary of the Army for Civil Works, does 3 something you don't care for, perhaps personally or 4 professionally, your institutional parameter is to, as 5 you said, I believe, salute and drive on, right?</p> <p>6           A. With a very strong exception. If it 7 basically is either doing something which is against 8 some -- something about our values, something to do 9 with integrity, in the occasion of something on the 10 battlefield that would end up being an illegal order; 11 or on this one specifically, if it gets to a point 12 where we feel that the law is not being done in 13 accordance with our normal established procedures.</p> <p>14           Q. Did you feel that that circumstance was 15 approaching a trigger point in the context of how 16 Ms. Darcy was considering and addressing the DAPL 17 protests while she was in office?</p> <p>18           MS. ZILIOLI: Objection; ambiguous, 19 vague.</p> <p>20           A. So at this time, probably not. And I 21 think it's key to make sure in my testimony -- we keep 22 talking about the word "evolve." This continued to get 23 worse and worse. So when that first statement came 24 out, this was probably a good low shot under the bow to 25 keep everybody, without getting a lot more -- almost</p>	<p style="text-align: right;">Page 69</p> <p>1 is, is that we have a set of procedures that says, 2 "Here is what we have to do to be able to approve an 3 easement." It's a little bit different for 4 different-sized pipelines. We go through our 5 procedure, and then we basically execute that procedure 6 based on the results of our analysis.</p> <p>7           If, in fact -- so we have an obligation to 8 both parties. We have an obligation to the United 9 States public to be able to make sure we're doing it 10 right. And just as important -- not more important, 11 but just as important -- is an obligation to the 12 applicant to be able to make sure that the applicant is 13 getting a permit, if the Corps decides the applicant 14 deserves a permit.</p> <p>15           So at some given point in this process 16 when we were just going to say we were going to 17 continue to study it, the question is, we -- we didn't 18 necessarily feel we needed to study it. We did our due 19 diligence. We knew what our answer was. Our answer 20 didn't change. So the ability in echelons above me -- 21 and I don't know where that happened -- but to delay 22 the execution of that permit, we felt was not 23 necessarily in keeping with our obligations to the 24 applicant.</p> <p>25           Q. (BY MR. SEBY) Yeah. And do you think</p>

July 26, 2022

<p style="text-align: right;">Page 70</p> <p>1 that was the reason for General Spellmon's and Colonel    2 Henderson's surprise and frustration by that    3 September 9th announcement?</p> <p>4 MS. ZILIOLI: Objection; speculation,    5 assume facts not in evidence.</p> <p>6 A. I think what we were all worried about in    7 September was, what was the trajectory of this action.    8 And given that this -- we were getting into the winter    9 season, the protests were getting bigger, more unruly,    10 more violent, more law enforcement, we felt that this    11 action, if anything, just to continued to embolden    12 protesters to stay on the ground and continue to make a    13 very, very visible statement to the Administration not    14 to approve the permit.</p> <p>15 Q. (BY MR. SEBY) I see. And so, General, I    16 have to ask, then, why did you entertain the Corps    17 considering whether or not to give a use permit to use    18 the Corps land and stay on the Corps land to    19 protesters, when those protesters were a -- a fraction    20 of the larger protesters who the Corps was recognizing    21 was violent and using the Corps property for trespass    22 and attacking public property and private property?    23 Why -- why did -- why did the Corps allow that track to    24 go forward when you had that concern?</p> <p>25 MS. ZILIOLI: Objection; assumes facts,</p>	<p>1 conclusion.</p> <p>2 A. I'm not sure that I felt we lost any of    3 our authority or jurisdiction. And again, vague    4 memory, but I think, in retrospect, what it looked like    5 was that the Corps' decision was being questioned,    6 which put our credibility on the line.</p> <p>7 Q. (BY MR. SEBY) Is that -- is that    8 something that concerned you?</p> <p>9 A. So my entire tenure of my time, not only    10 in the Army, but in the Corps, was to always maintain    11 the reputation of the U.S. Army and the U.S. Corps of    12 Engineers as the most trusted federal engineering firm    13 in the world. And so any time we ever had any question    14 with our reputation or our credibility, our ethics, our    15 values, that always was one of my highest concerns.</p> <p>16 Q. Yeah. Did you ever have a discussion with    17 Ms. Darcy about that very topic?</p> <p>18 A. So, I don't remember that. I probably    19 did, but I don't remember it coming to a head until    20 sometime probably in November or December.</p> <p>21 Q. Did you ever have that discussion with    22 anyone other than Ms. Darcy in September or October    23 2016?</p> <p>24 A. I think internal to my very close staff,    25 which would have included Colonel Henderson at the</p>
<p style="text-align: right;">Page 71</p> <p>1 misstates evidence.</p> <p>2 A. So I would say that this was a series of    3 different steps. Perhaps the statement you mentioned    4 in early September was one step. There were other    5 actions taken by the District Court. There were    6 actions taken to try to mitigate this to defuse the    7 situation. As those different steps failed to    8 materialize in getting the results on the ground, then    9 we had to continue to look at what other options there    10 were.</p> <p>11 Again, I don't believe I was necessarily    12 the decision-maker on the special use permit. We    13 thought all along -- I guess we probably hoped all    14 along that had we issued that, at some given point the    15 protesters would have gone away. And, therefore, by    16 giving them that venue, we would have allowed this to    17 defuse as the winter months came on.</p> <p>18 Q. (BY MR. SEBY) I see. Do you think that    19 when you were talking about normal Corps procedures for    20 permits and approvals and -- of the like, that when the    21 September 9th joint agency -- three-agency statement    22 came out, that the Corps lost or conceded some of its    23 authority for the easement, because it was now subject    24 to a three-party federal agency process?</p> <p>25 MS. ZILIOLI: Objection, legal</p>	<p style="text-align: right;">Page 73</p> <p>1 district level, General Spellmon at the division level,    2 we were worried about if, in fact, the Administration    3 continued to maintain that same position, then where    4 would this get resolved.</p> <p>5 Q. So it was an open and lingering topic of    6 concern within the Corps and yourself and your staff    7 for a significant period of time, it sounds like?</p> <p>8 MS. ZILIOLI: Objection, mischaracterizes    9 testimony.</p> <p>10 Q. (BY MR. SEBY) I'm asking. I'm not trying    11 to put words in your mouth. I'm just trying to    12 appreciate, understand precisely what you're saying; is    13 that there was a passage of several weeks, if not    14 months, where this announcement in the September 9th    15 Joint Statement to look back at and evaluate the    16 decisions the Corps had already made concerned you for    17 several weeks or months. And it was an open issue,    18 because the consideration -- reconsideration was    19 ongoing for a while. Is that accurate?</p> <p>20 MS. ZILIOLI: Same objection.</p> <p>21 A. It -- it definitely continued to get to be    22 more of a concern as time evolved. Again, the first    23 couple weeks of September, it was probably much more    24 contained to a very small internal group. But as we    25 got to be in the national press and there was -- and I</p>

July 26, 2022

<p style="text-align: right;">Page 74</p> <p>1 don't know the details, but at some given point, the    2 permittee -- that would have been Energy Transfer    3 Partners or whatever -- was continuing to push us to be    4 able to resolve it. And so we were clearly caught in    5 the middle of being asked to continue to study this    6 longer delay of decision, when, I think in fairness to    7 my team, we felt we had done due diligence, and there    8 was no viable reason that we could justify delaying a    9 recommendation.</p> <p>10 Q. (BY MR. SEBY) Yeah. And when you say you    11 met with Ms. Darcy with some manner of frequency -- not    12 as much as your -- your staff, but you met with her, I    13 don't know, maybe -- maybe once a month, I think you    14 said, was -- was that frequency of meeting with her,    15 did that carry through during this time period, or was    16 it less or more?</p> <p>17 A. I don't remember. Normally, I have a    18 very, very consistent battle rhythm, so I would have    19 envisioned it would have been the same. And I remember    20 those discussions; very cordial. Again, we wanted to    21 continue to try to find an acceptable solution for    22 everybody. So there was a lot of discussions as to the    23 variables in this equation. But I -- I think as time    24 went on and we didn't necessarily see a path forward,    25 that concern got more intense for me.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. (BY MR. SEBY) Can you help me understand    2 why that mattered? I don't appreciate why what happens    3 every four years in the United States, as a matter of    4 our constitutional course, would make any difference to    5 the execution of the Corps' mission and function.</p> <p>6 A. So it doesn't matter at all to the Corps.    7 We pride ourselves on being apolitical. We don't have    8 a party. We don't have a position on this stuff. It    9 is our charter and our oath to administer the law as is    10 written and established by Congress.</p> <p>11 On the other hand, there were, at this    12 time, growing concerns in the Department of Defense    13 that the Department of Defense might be asked to step    14 in with respect to law enforcement activities, either    15 done by National Guard under state authority or under    16 federal authority. And I think that the optics of a    17 continued protest on the nightly news could have been    18 played by the political parties, either for or against    19 in different manners. Our job is to stay out of that,    20 but I'm not convinced that that was not a consideration    21 by elements higher than me.</p> <p>22 Q. Help me understand that. Why would the    23 incumbent Administration delay a decision and    24 exacerbate an ongoing protest on federal property? I    25 don't see the connection there. What is -- what is it</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Yeah. Was -- was part of that concern    2 exacerbated by a perception, perhaps, of Ms. Darcy    3 being less available or less responsive than you felt    4 she should, given the -- the pendency of that lingering    5 question?</p> <p>6 MS. ZILIOLI: Objection, assumes facts not    7 in evidence.</p> <p>8 A. So, certainly not less available. I don't    9 think availability was ever an issue. I think the    10 concern was, is that we just didn't feel that we had    11 clarity on what she felt was lacking in our initial    12 analysis. And it was almost more of, I think, a    13 stalling tactic.</p> <p>14 Q. (BY MR. SEBY) Yeah. Do you think    15 Ms. Darcy owned the stalling tactic, or was she merely    16 carrying it through at the behest or in concert with    17 other federal representatives?</p> <p>18 MS. ZILIOLI: Objection, speculation.</p> <p>19 A. I don't know this. I think it's important    20 for this deposition to realize, also, that this was    21 getting closer and closer to a national election. So    22 people that might have been more politically involved,    23 I think were continuing to look at how this might play    24 out, had this protest and issue continued to merge    25 right up into the national election.</p>	<p style="text-align: right;">Page 77</p> <p>1 that you're thinking?</p> <p>2 MS. ZILIOLI: Objection; misstates    3 evidence, assumes facts.</p> <p>4 A. So I don't know if I can connect the dots    5 for you, whether it's a Native American issue or a    6 pipeline issue or a green energy issue. I just know    7 that we got to the point where we were past regulatory    8 thinking, and some of the guidance we got, I think I    9 just was worried that it was -- had some degree of    10 political connotation.</p> <p>11 Q. (BY MR. SEBY) Yeah. And that's really --    12 my question is, why? Why -- why was -- why did anybody    13 look at these issues and feel the need to ascribe a    14 political connotation to them? That's the part I don't    15 understand.</p> <p>16 MS. ZILIOLI: Objection, speculation.</p> <p>17 A. Well, if there's a perception in the    18 Administration that this pipeline should not have been    19 approved -- I don't know there was -- but if there was,    20 and for some reason if the Corps made a recommendation    21 to approve it, the Corps is an element of the    22 Administration, I think that that would have put    23 certain players in uncomfortable positions.</p> <p>24 That is truly my speculation only. But    25 any -- I've been through this for a couple different</p>

July 26, 2022

<p style="text-align: right;">Page 78</p> <p>1 elections. Any time you're close to a national 2 election, no one wants to be able to be the lightning 3 rod to bring attention to either something that could 4 be perceived as going not necessarily in the direction 5 that somebody wants it to go.</p> <p>6 Q. (BY MR. SEBY) Yeah, and I can appreciate 7 that. The part I don't understand is, this wasn't 8 happening in a vacuum. There were several thousand 9 people resident on Corps property with no -- no legal 10 authorization to be there. And meanwhile, the -- 11 Ms. Darcy, or others were asking her to, delay the 12 decision on the pipeline. How did that help the fact 13 that you had people setting up residence and building 14 stuff on Corps property? How did that help things?</p> <p>15 I only can -- can appreciate the 16 perspective that it made it worse. And so I -- I'm 17 trying to understand what the motive or rationalization 18 would be from a political person to say that, "We're 19 going to not make a decision while we have that problem 20 going on right now in North Dakota on our property. 21 And just -- just let it ride until the election in a 22 couple of months."</p> <p>23 MS. ZILIOLI: Objection; assumes facts, 24 misstates evidence, speculation, ambiguous.</p> <p>25 A. Yeah. So I can't speculate on exactly</p>	<p style="text-align: right;">Page 80</p> <p>1 in a working status. I believe Colonel Henderson gave 2 the Standing Rock some period of time to come through 3 on those conditions. So while that permit still had a 4 probability of approval, then we looked at them as just 5 having their ability to do -- to be able to have their 6 First Amendment rights and, to a degree, some degree of 7 clearance to be able to be on the land.</p> <p>8 There -- there was some point, and I don't 9 remember when, when it appeared that the Standing Rock 10 was not going to honor those commitments. And I don't 11 know whether the permit, then, was withdrawn, canceled, 12 or just null and void. But at some given point when 13 they were on the land, and it was not in the way the 14 Corps wanted them to be, we could talk north and south, 15 then I do believe we certainly considered them as being 16 on the land with -- without valid authorization.</p> <p>17 I'm not sure the legal term of "trespass"; 18 but when we ask somebody to remove themselves from our 19 land and they fail to do that, it clearly was a concern 20 to us, mainly due to their own life safety.</p> <p>21 Q. And so I understood your -- your response 22 and -- and appreciate that during the pendency of the 23 special use permit consideration, you didn't -- you're 24 saying you didn't view the Standing Rock people as 25 trespassers, because they were the applicant for the</p>
<p style="text-align: right;">Page 79</p> <p>1 what all the factors were involved. I just know that I 2 encourage and almost mandate my team that you follow 3 the law, you follow policy, you follow regulation. We 4 had done that, up until September. And then we had a 5 hard time continuing to do due diligence and support 6 the regulatory system with some of the guidance we were 7 getting. And it's -- we'll leave it up to history to 8 figure out why the actions taken above me were taken 9 the way they were.</p> <p>10 Q. (BY MR. SEBY) Sure, yup. So back to the 11 situation on the ground in North Dakota, as of August, 12 with the protesters arriving on Corps property. Do you 13 recall whether you or other Corps officials referred to 14 those protesters on Corps property as trespassers?</p> <p>15 MS. ZILIOLI: Objection; assumes facts, 16 legal conclusion.</p> <p>17 A. So --</p> <p>18 Q. (BY MR. SEBY) I'm not asking you to make 19 an assumption, General. I'm asking you if you, 20 personally, or in the presence of other Corps 21 representatives, referred to those people as 22 trespassers?</p> <p>23 A. So I don't believe we did in the 24 September-October time frame. And we talked about an 25 hour ago about the fact that the special use permit was</p>	<p style="text-align: right;">Page 81</p> <p>1 special use permit; is that correct?</p> <p>2 MS. ZILIOLI: Objection, legal 3 conclusion.</p> <p>4 A. Yeah, I think that's the way I remember 5 it. Now, there could have been times where we might 6 have written letters to them or we might have said, "If 7 you don't do this by day X, then we're going to 8 consider . . ."</p> <p>9 At lower levels, there could have been 10 more use of the word "trespass." I think we wanted to 11 continue to look at how we could consider them as 12 authorized to be there within some very, very fenced 13 parameters. And I believe the parameters were that 14 none of the state and local laws were broken, that they 15 had to -- there were definitely some health 16 considerations with respect to conditions on the 17 ground. I -- I think that those are the things that we 18 wanted to make sure were being done right.</p> <p>19 Q. (BY MR. SEBY) Sure. And that's as to the 20 Standing Rock people, because they were the ones that 21 actually applied for such a permit, right?</p> <p>22 A. So, I think they were the ones that 23 applied, but I think -- and I don't know this -- the 24 permit could have been able to cover other tribes that 25 were there. So, in other words, I'm not sure you had</p>

July 26, 2022

<p style="text-align: right;">Page 82</p> <p>1 to show an ID card to say, "I'm Standing Rock and,    2 therefore, I'm able to be there." I think the Standing    3 Rock applied for the permit, but I don't know the    4 specific parameters of what the -- who the permit    5 allowed to be on there. Good example, if you're not a    6 Native American, and you're a Hollywood actress, are    7 you able to be on there under the guise of the Standing    8 Rock -- of the standing permit? I don't know that.</p> <p>9 Q. Okay. You don't know. You don't know    10 where the -- whether the special use permit was an    11 everybody who is protesting authorization or just    12 the -- just Standing Rock tribal members. You don't    13 know that?</p> <p>14 A. I don't know that. But my guys do    15 unbelievable detailed work, and I'm sure that it's easy    16 to read the permit and figure out what the conditions    17 of the permit were. I'm sure we stipulated what those    18 were in the document.</p> <p>19 Q. Yeah, of course, indeed. Okay. So that    20 was for the -- the pendency of the consideration of the    21 Standing Rock Sioux Tribe application for a special use    22 permit. And we'll leave open the question of for whom    23 the permit covered. And the document certainly speaks    24 for itself. But earlier, I heard you acknowledge that    25 there never actually became an effective special use</p>	<p style="text-align: right;">Page 84</p> <p>1 either get everybody off the north side, or we're going    2 to have to start enforcing removal."</p> <p>3 And -- and I think this is where it began    4 to start working with law enforcement officials. This    5 is when we began to start modeling, if the water comes    6 up and if, in fact, those people are still in that    7 camp -- you called it the Main Camp -- that,    8 theoretically, that was a dangerous place to be. And    9 the worst thing that can happen -- it's one thing if    10 you're seeing people protest on TV at night, perhaps    11 illegally; it's something else to see violence. What    12 we were very, very afraid of is that we were going to    13 have somebody that got hurt on Corps property by being    14 in a place where we couldn't control the water and    15 their safe conditions.</p> <p>16 Q. (BY MR. SEBY) Yeah. Do you recall,    17 General, how long the Corps engaged in the pendency of    18 the special use permit, hoping the Tribe would meet the    19 conditions in the permit that the Corps tendered to    20 them? How long did that all go on from the application    21 in -- in August and the presentation of a proposed    22 unsigned permit to the Tribe in -- in the third week of    23 September? How long after that did you -- did the    24 Corps officials under you try to get the Standing Rock    25 to meet their obligations under the permit for it to be</p>
<p style="text-align: right;">Page 83</p> <p>1 permit, and I agree with you.</p> <p>2 What about, though, the issue of the    3 protesters encamped on the north side of the Cannonball    4 River, on Corps property, that were never part of the    5 Standing Rock Sioux Tribe's permit application for a    6 use area on the south side of the river? What did you    7 consider those people?</p> <p>8 A. So I just don't know the details of who    9 was there, how many people, why they were there, how    10 long they were there. I just don't have some graphic    11 array that shows me exactly who's what. I just can't    12 answer that question.</p> <p>13 Q. Yeah. Do you think that you ever knew the    14 answer to that question about the -- there never was    15 even an attempt to get a special use permit applied for    16 by the large number of people on the north camp --    17 otherwise known as the Main Camp or the Oceti Sakowin    18 or the Seven Councils Camp?</p> <p>19 MS. ZILIOLI: Objection, assumes facts.</p> <p>20 A. So you're using terms I'm not aware of. I    21 don't recognize any of those names. I do believe -- I    22 remember at some point, when it looked like the    23 conditions were not going to be met for the -- the    24 permit on the south side, that Colonel Henderson met    25 with the chief and said something like, "Hey, you know,</p>	<p style="text-align: right;">Page 85</p> <p>1 effective? How long did that go on?</p> <p>2 A. So I don't have a tick-tock laydown of all    3 the dates. From what we're saying, it sounds to me    4 like it was probably four to six weeks, something on    5 that order, because I know that somewhere this    6 materialized probably the end of October, of telling    7 them to get off. So if they applied for the permit in    8 mid-September, 30 to 45 days, something like that.</p> <p>9 Q. Okay. And what do you mean by telling    10 them to get off?</p> <p>11 A. Well, I think, again, to -- to leave the    12 Corps land and -- and get off. And I'm assuming you're    13 talking the -- the north side?</p> <p>14 Q. Yes, yeah, for example. Would it surprise    15 you if that direction to get off the property didn't    16 actually occur until November 25th, by letter from    17 Colonel Henderson, then providing a date of December 5    18 in which to get off; but very much at the behest of    19 others in the Administration making clear that you    20 wouldn't actually force them to get off or evict them;    21 that there was quite a discussion between Ms. Darcy and    22 the Department of the Interior cautioning the Corps    23 against using any language that could be inferred to    24 indicate that you would actually mean it and tell    25 people not only to get off, but get off now, or we're</p>

July 26, 2022

<p>1 going to make you get off?</p> <p>2 MS. ZILIOLI: Objection; assumes facts, 3 misstates evidence.</p> <p>4 A. So it doesn't surprise me. Obviously, 5 you've got a much better handle on the dates. And if 6 it was a November time, I understand that. We were 7 extremely cautious here to try to find a path of least 8 resistance where we could support the Administration 9 while, at the same time, minimizing issues on the 10 ground. So a November time frame doesn't necessarily 11 surprise me. And I'm not sure I know the last part of 12 your question, where we basically were told not to do 13 law enforcement. If that happened, it certainly 14 doesn't surprise me, but I'm not sure I remember 15 specific direction not to do that.</p> <p>16 Q. (BY MR. SEBY) Yeah. Thank you. And I 17 appreciate the Corps is operating within the larger 18 Administration and subservient to civil control and 19 command. I appreciate that. You've made that very 20 clear.</p> <p>21 Do you know, General -- do you recall when 22 the Corps made a decision to let the protesters, the 23 DAPL protesters on Corps land, remain there? Was that 24 a -- was that a conscious decision, discrete decision, 25 or was it sort of a -- it just played out that way?</p>	<p>Page 86</p> <p>1 MS. ZILIOLI: Objection, assumes facts. 2 A. So those dates, those are probably 3 different than what I would have recollected. I would 4 have thought that this was resolved somewhere in 5 January. There was a time, at some point, where the 6 easement was approved. The company went in and did the 7 boring and, by default, this was fait accompli. Now, I 8 think that must have been after the new Administration 9 was in play. So I would have thought at some point 10 this would have been pretty much resolved by the end of 11 January.</p> <p>12 Q. (BY MR. SEBY) Okay.</p> <p>13 A. But I'm not disagreeing. If you've got 14 facts that say March, then I certainly understand that.</p> <p>15 Q. No, I understand. We're not -- you're not 16 being argumentative in the least. Sir, with respect to 17 the several thousands of protesters and the eight-plus 18 months that they occupied Corps lands, do you know how 19 many Title 36 or other types of citations the Corps 20 issued to DAPL protesters present on its lands in North 21 Dakota; how many citations?</p> <p>22 MS. ZILIOLI: Objection --</p> <p>23 A. So, I have no idea.</p> <p>24 Q. (BY MR. SEBY) Okay. Would it surprise 25 you?</p>
<p>1 MS. ZILIOLI: Objection; assumes facts, 2 legal conclusion.</p> <p>3 A. So I just don't remember, even if you were 4 to ask me, when did the protesters leave. I mean, I 5 guess I kind of thought it was somewhere before 6 Christmas. But if it was into, you know, January or 7 February, that doesn't surprise me, either. I think at 8 some point it just got so cold, that I think some of 9 them migrated back to the reservation. But I just 10 don't have a good understanding of those dates.</p> <p>11 Q. (BY MR. SEBY) Okay. So that was going to 12 be my next question, is, do you recall how long 13 protesters remained on Corps property?</p> <p>14 A. I'm guessing anywhere from two to three to 15 four months, but I -- I don't have a good understanding 16 of that.</p> <p>17 Q. Would it surprise you, sir, to hear that 18 it was actually on the order of eight months?</p> <p>19 MS. ZILIOLI: Objection, assumes facts.</p> <p>20 A. Yeah, I think I would be surprised to hear 21 eight months.</p> <p>22 Q. (BY MR. SEBY) Okay. So the idea that 23 protesters were on Corps property in August of 2016 and 24 stayed there, uninterrupted, through March or April of 25 2017, that surprises you?</p>	<p>Page 87</p> <p>1 MS. ZILIOLI: Objection, assumes facts. 2 A. You need to elaborate. I'm not sure I 3 even know what the authority a citation has. I just 4 don't have that level -- I don't know whether it's a 5 traffic ticket or a summons. I just don't have any 6 understanding of how that potential citation action 7 plays out.</p> <p>7 Q. Sure. And I wasn't so much focusing on 8 what the -- what the nature of a citation is or what it 9 means and what it -- what it sets in motion 10 when one is written. But do you agree with me the 11 Corps has the authority to issue citations to people 12 who are present on its land that the Corps believes are 13 not appropriately there or behaving appropriately while 14 they're there? We agree that the Corps has such 15 authority, correct?</p> <p>16 MS. ZILIOLI: Objection, legal 17 conclusion.</p> <p>18 A. I believe we do have that authority. I'm 19 sure, though, that with all the -- all of the 20 discussions in the interagency, either -- at some point 21 we were probably given either guidance not to do that 22 or some parameters as to how to not make the problem 23 worse by issuing citations. It could very easily be 24 that we were told, "Leave them there and don't do any 25 citations." I don't know that, but we would have</p>

July 26, 2022

<p style="text-align: right;">Page 90</p> <p>1 followed whatever the Administration's guidance was.    2 And most of that would probably come from the Bureau of    3 Indian Affairs.</p> <p>4 Q. (BY MR. SEBY) And I certainly am not    5 asking you to speculate what -- what might have    6 happened. I'd rather just stick to what you recollect.    7 And do you recall any instances where -- you know, I'm    8 thinking about this in the context of what you told me    9 earlier, which makes complete sense and is part of the    10 discipline of the Corps and the transparency of the    11 Corps -- where you -- you have a job that's spelled out    12 by law and your regulations and custom and practice for    13 executing and administering those things.</p> <p>14 But here, there were people on your land    15 who you didn't give permission to be there. And you    16 have the ability to -- to issue citations when people    17 aren't playing by the rules on your property. Why did    18 you not do that, is the question? Was it because you    19 were, in fact, told not to; or because you, as the    20 chief of engineers, said, "Let's not do that in this    21 instance"?</p> <p>22 MS. ZILIOLI: Objection; assumes facts,    23 misstates testimony, legal conclusion.</p> <p>24 A. So I never gave any specific guidance as    25 to what to do or not do with respect to that. I think</p>	<p style="text-align: right;">Page 92</p> <p>1 it another way, because it's -- it's really the    2 question that's -- that's been out there. Are you    3 aware of anyone telling the Corps not to issue    4 citations to protesters on Corps property?</p> <p>5 MS. ZILIOLI: Objection, asked and    6 answered.</p> <p>7 A. I just don't know the answer to that.</p> <p>8 Q. (BY MR. SEBY) Okay. I understand. Thank    9 you. And do you know why the Corps didn't issue any    10 citations?</p> <p>11 MS. ZILIOLI: Objection; assumes facts,    12 mischaracterizes testimony.</p> <p>13 A. I think we got to a point where at some    14 given point, if people are going to be there doing    15 things which were probably close to illegal -- they    16 were not following law enforcement guidance, they were    17 not following our guidance -- by giving them some    18 ticket, I'm not sure we thought was going to be good.    19 If we had done that -- and we might variously have    20 issued citations -- I'm not sure that the average    21 person who was in noncompliance is going to be impacted    22 or affected by having a citation.</p> <p>23 So it's probably a good question. I just    24 don't know the parameters of how some of that was    25 either played out or thought through that. I think if</p>
<p style="text-align: right;">Page 91</p> <p>1 it's incumbent to realize that while the Corps has    2 certain authorities and opinions, perhaps, of what the    3 ramifications could be, we want to continue to work    4 within the umbrella of the Administration. And so this    5 is where we were a tool and had tools available, but    6 when you look at the larger context of life safety,    7 Native American rights, the right to protest, free    8 speech, I don't think that the Corps' ability to -- to    9 issue a citation is more important than any of those    10 other things.</p> <p>11 And so this is where we take our guidance    12 from where the Administration wanted to balance all    13 those interests. And at some point, we -- because I'm    14 not sure that the citation would have had any real    15 ability to do anything, I'm sure we followed whatever    16 guidance we got. But I do not know if we got specific    17 guidance with respect to citations or not.</p> <p>18 Q. (BY MR. SEBY) Yeah, and I -- I appreciate    19 all that. That's -- you've said that; that, you know,    20 the Corps doesn't operate in a vacuum. You're part of    21 the Administration. And while you have your rules and    22 custom and practice for administering the law with    23 regard to your property, you're also a piece of the    24 larger Administration.</p> <p>25 And so my question, I'm just going to ask</p>	<p style="text-align: right;">Page 93</p> <p>1 it was something -- somebody said, "Go write them all    2 up and give them citations," we certainly would have    3 done it. I think we were much more interested in    4 trying to come to a conclusion which was, like I said    5 at the very beginning, the best possible outcome of all    6 bad courses of action.</p> <p>7 Q. (BY MR. SEBY) And I appreciate that. So    8 basically, the Corps -- is it fair to say -- let me --    9 let me rephrase my -- my question. Is it fair to say    10 that the Corps, in the face of several thousand people    11 without permission on Corps property and in a state of    12 anarchy, the decision was made to not use traditional    13 enforcement tools, but to try and -- and approach the    14 problem in a different way?</p> <p>15 MS. ZILIOLI: Objection; assumes facts,    16 ambiguous, misstates evidence.</p> <p>17 A. I'm not sure I would agree with your word    18 "anarchy." There's probably a lot of definitions of    19 that. And so I think it's best to say that they were    20 not necessarily in accordance with the manner we wanted    21 them to behave and under the special use permit.</p> <p>22 I do remember that at some point Colonel    23 Henderson -- and I'm not going to say it was an    24 edict -- but at some point you mentioned a November    25 letter, when he basically said, "Hey, listen. It's</p>

July 26, 2022

<p style="text-align: right;">Page 94</p> <p>1 time to leave." I do believe he discussed with local    2 law enforcement officials, "Hey" -- and I don't know    3 the CFR very well at all. Like I told you, I probably    4 couldn't recite any of it. But I think the way that    5 that document or that law or that regulation is written    6 allows local enforcement, whatever the state capability    7 is, to come on federal land and to be able to enforce    8 that.</p> <p>9 So the question that you have asked    10 several times about citations, I think Colonel    11 Henderson continued to recommend to the local law    12 enforcement officials, "You have the authority, under    13 the CFR, to come on our land and to be able to    14 enforce." I think -- I think somewhere in the CFR it    15 talks about civil disobedience; if things are not being    16 done in accordance with state or local laws, then it's    17 your responsibility to come in and do it. Because the    18 bottom line is, the Corps does not have an enforcement    19 capability. Now, maybe my words are off here, maybe a    20 citation is enforcement. But the ability to actually    21 rectify behavior through law enforcement-like    22 capabilities, we don't possess that. We have to rely    23 on state and local authorities to be able to put that    24 discipline back in on the ground.</p> <p>25 Q. (BY MR. SEBY) Would it surprise you, sir,</p>	<p style="text-align: right;">Page 96</p> <p>1 marshals or whatever it is, but at some given point,    2 there was a lot of law enforcement people from local,    3 state, and the interagency trying to figure out how to    4 put a law enforcement package together to be able to    5 help mitigate this on the ground.</p> <p>6 Q. (BY MR. SEBY) Would it surprise you, sir,    7 to learn that Colonel Henderson's letters and    8 correspondence to the State of North Dakota and the    9 political subdivisions of Morton County actually    10 contained express statements saying, "We are not asking    11 you to assist with protesters on the north camp or some    12 of the south camp properties"? Not only did he not    13 invite them or request them, but he said, "Do not help    14 us with respect to those camps." Would that surprise    15 you to know that was the case?</p> <p>16 MS. ZILIOLI: Objection; assume facts,    17 misstates evidence.</p> <p>18 A. So I would say yes. And I think that it's    19 important to point out that I have the utmost respect    20 for Colonel Henderson. And it's important at this    21 point to say that of the 43 colonels I had working for    22 me, he was, without a doubt, my number one colonel.    23 Had it not been for his kids, he would have stayed on    24 and probably could have been a general officer.</p> <p>25 But this guy was above reproach. He was</p>
<p style="text-align: right;">Page 95</p> <p>1 to learn that Colonel Henderson actually did not do    2 that? He did not ask law enforcement in the state of    3 North Dakota to come on and remove people who were    4 unlawfully present on your property, that no such    5 request was ever made. Would it surprise you to know    6 that today?</p> <p>7 MS. ZILIOLI: Objection; assumes facts,    8 misstates evidence.</p> <p>9 A. So I guess the answer is yes, because that    10 was not necessarily my understanding. I believe that    11 there was a lot of discussions back and forth between    12 the district, Colonel Henderson, and -- and I don't    13 know exactly what parts of the state law enforcement,    14 but I know that there was a lot, a lot of discussion.</p> <p>15 And I think, at the time, I remember it    16 being much more of a partnership. It was not where,    17 "Hey, you know, you're asking us to do something we    18 can't do." It was much more of, "How are we going to    19 take and combine state enforcement, along with what    20 you're asking us to do, to be able to get the situation    21 under control?"</p> <p>22 I don't know the details, but I know that    23 at some point there were also requests for federal    24 enforcement, and I don't think that ever materialized;    25 it might have. And I don't know whether I'm talking</p>	<p style="text-align: right;">Page 97</p> <p>1 very, very well schooled on the authorities.    2 Obviously, he must have gotten advice from counsel or    3 other parts of the Administration on why not to do    4 that. But I'm not necessarily tracking with exactly    5 what you're saying. But I think, more importantly, if    6 that's true, which I have no reason to doubt what    7 you're saying, then I'm sure he did that because he was    8 either worried about escalation or, you know, the    9 appearance of violence or other things.</p> <p>10 There was a very, very large concern --    11 and I had this by senior militaries of the Department    12 of Defense -- with having soldiers go head to head with    13 Native Americans and the optics of how that would play    14 out on TV. And so even though -- and I don't know for    15 sure, but I think at some point there were National    16 Guard who were under the authority of the State --    17 don't forget, National Guard could be federalized and    18 work for DOD, or they could work for the State -- but    19 there were a lot of concerns with the National Guard    20 leadership to keep National Guard in the back doing    21 traffic control, helping with housing, helping with    22 other type stuff, and never get a flashpoint of where    23 somebody in a military uniform is enforcing a law    24 enforcement activity with a Native American. We    25 just -- we were very, very concerned about those</p>

July 26, 2022

<p>1 optics.</p> <p>2 Q. (BY MR. SEBY) So is that the reason why 3 you let the protesters stay so long?</p> <p>4 MS. ZILIOLI: Objection; assume facts, 5 misstates evidence.</p> <p>6 A. So we didn't do anything in a vacuum. 7 Again, I think that this was an interagency decision. 8 They were -- DOI, DOJ, in close coordination with the 9 Department of Defense, were really the drivers behind 10 those decisions. Had we been told to do something else 11 or we had been given other venues available, we 12 certainly would have done that. But at this point, and 13 probably as early as the middle of -- middle of 14 October, the Corps was really out of the process of 15 determining how to resolve this. This was much more of 16 an interagency and Administration decision.</p> <p>17 Q. (BY MR. SEBY) And what was the day -- the 18 date that you said the Corps was really out of the 19 process and the interagency decision took -- took over?</p> <p>20 A. Well, I don't know the date you said of 21 that -- that announcement, but I would say that --</p> <p>22 Q. September 9th.</p> <p>23 A. -- this all started probably with that 24 joint announcement that took the Corps kind of out of 25 it in early September. So this was a -- this was the</p>	<p>Page 98</p> <p>1 was involved. In later years, I did a lot of work 2 personally with the White House and some of these 3 interagencies. At this point, I had been in command, I 4 guess, three to four to five months. I was not well 5 known by the White House, the Obama Administration, or 6 probably any of the secretaries of the interagency. I 7 didn't work at that level at this point. And so as a 8 result, we got most of our direction from Ms. Darcy 9 either -- verbally on either what to do or, primarily, 10 maybe what we were not going to do.</p> <p>11 Q. General -- and so Ms. Darcy gave you 12 direction on what to do?</p> <p>13 A. I think she -- this probably goes back to 14 the discussion we had earlier on continuing to study 15 the issue and come back and give us more of your 16 decision -- more of your evidence on -- with respect to 17 the approval of the permit. I'm not sure Ms. Darcy 18 ever gave us any specific direction on the protest. I 19 believe most of that came through DOJ and probably 20 through DOI.</p> <p>21 Q. The what to do with respect to the protest 22 direction came from Department of the Interior?</p> <p>23 A. So I just don't know where that came from. 24 I know that most of this was a working group of about 25 five or six different agencies who, I'm assuming, met</p>
<p>Page 99</p> <p>1 beginning of something that continued to get, I think, 2 more and more out of our control.</p> <p>3 Q. Yeah. September 9th was the Joint 4 Statement.</p> <p>5 A. That's correct.</p> <p>6 Q. Sure, sure. Thank you for that. That was 7 helpful to understand. So -- and I -- we got to that 8 point of discussion because I had asked, at what point 9 did the Corps let those people stay. And I think 10 you've clarified that, you know, it got to 11 September 9th and the -- off the shelf came the Joint 12 Statement, on the same day that the Corps' decisions 13 were upheld against a challenge by the -- by the 14 tribes, including the Standing Rock Sioux Tribe. And 15 that even though you put one, the Administration, 16 through the interagency decision-making process, that's 17 when they decided to let those people stay, right?</p> <p>18 MS. ZILIOLI: Objection; misstates 19 evidence, assumes facts.</p> <p>20 A. So again, I think this was getting to be a 21 national strategic problem.</p> <p>22 Q. (BY MR. SEBY) Yeah.</p> <p>23 A. And so as a result, I don't know for sure, 24 but I think at some point I remember the National 25 Security Council was involved. I know the White House</p>	<p>Page 100</p> <p>1 either daily or weekly, whatever. But we would come up 2 with some recommendations, to a degree -- be it the 3 standing use permit or other options -- on where we 4 could either relocate or move people. And either we 5 briefed that to this working group, or they told us 6 what to do. But most of that, I think, was much more 7 driven by national level agencies as to how to resolve 8 this.</p> <p>9 Q. And you mentioned five to six different 10 agencies. Which -- which ones came to mind? I mean, 11 you said a couple, but just to round out, who all that 12 might be?</p> <p>13 A. So I think, clearly, there was the 14 Department of Defense, really executed by the 15 Department of the Army, Office of General Counsel. We 16 talked about the Assistant Secretary of the Army for 17 Civil Works, DOI. But probably internal to DOI was -- 18 I think it's Bureau of Indian Affairs, maybe it's BIA. 19 At some point, I think there was some degree of FBI 20 involvement. I don't know that, but I think at some 21 point they were part of this team.</p> <p>22 And then, honestly, the State of North 23 Dakota was a player in a lot of this. I don't think 24 the federal government did anything in a vacuum. But 25 at some given point, I would have thought that the</p>

July 26, 2022

<p style="text-align: right;">Page 102</p> <p>1 county, the local officials, the State, the Tribe -- I    2 mean, everybody was trying to figure out how to find    3 the best solution available.</p> <p>4 Q. Sir, the question was, you mentioned five    5 to six different federal agencies. And my -- my    6 question was, could -- could you just identify who --    7 who you had in mind when you used the -- the numbers    8 five to six as federal agencies?</p> <p>9 A. Yeah, so I thought I did. Department of    10 Defense.</p> <p>11 Q. Got it.</p> <p>12 A. Department of the Army; Department of the    13 Interior, specifically DIH; Department of Justice; the    14 FBI. That's four. Maybe four is the right answer,    15 then.</p> <p>16 Q. Okay.</p> <p>17 A. But on some of those, like the Department    18 of Defense, there were three or four different    19 subagencies --</p> <p>20 Q. Yes.</p> <p>21 A. -- that were on that team. So DOD General    22 Counsel was there with Department of Army General    23 Counsel. And I think it's important to say that I also    24 tell my guys, "You're my team. Stay in your lane.    25 You're engineers. You worry about water, you worry</p>	<p style="text-align: right;">Page 104</p> <p>1 response to an interviewer's question about the -- the    2 consideration by the interagency team to look at    3 decisions that have already been made by the Corps? Do    4 you recall the president, as part of his remarks,    5 indicating that the Army Corps is examining ways to    6 reroute the pipeline? Do you recall that instance?</p> <p>7 MS. ZILIOLI: Objection; assumes facts,    8 misstates evidence.</p> <p>9 A. So I actually do remember discussions    10 about rerouting. I don't remember that the President    11 said it, but I do know that there were some    12 proponents -- maybe press, maybe protesters, maybe    13 environmental groups -- who, at some point, brought the    14 idea up of rerouting. So yes, I do know that that was    15 a variable. I don't remember the time, though. That    16 could have been in the summer before the protest, it    17 could have even been after the Administration change.    18 And I just don't remember the -- the dialogue.</p> <p>19 Q. (BY MR. SEBY) Do you recall having an    20 opinion, one way or the other, on the concept of the    21 Corps examining rerouting the pipeline that had already    22 been permitted and approved on the land route, which    23 was the majority of the pipe in North Dakota, by the    24 State of North Dakota Public Service Commission and not    25 the Army Corps of Engineers?</p>
<p style="text-align: right;">Page 103</p> <p>1 about federal land. When it comes to exactly how we're    2 going to resolve, you know, political situations, then    3 we defer to those that have the authority to be able to    4 resolve those."</p> <p>5 And we basically went and said, "We have a    6 challenge. Here are some tools we have available."    7 And at that point, I think the interagency took over    8 control and basically said, you know, "Either you're    9 going to execute what we tell you to do, or don't do    10 anything without informing us and make sure that we're    11 a consolidated team versus the Corps trying to resolve    12 it." This is where, in September, it was pretty much    13 my, I think, belief that this was going to truly be an    14 Administration's resolution versus the Corps of    15 Engineers'.</p> <p>16 Q. Yup. Thank you. Do you recall the    17 President of the United States making a public comment    18 on one or more occasions about the Dakota Access    19 Pipeline and the protests associated with it?</p> <p>20 A. I don't, but it's certainly -- I would    21 expect at some point he would have certainly made    22 some -- some comments in a press conference or    23 whatever.</p> <p>24 Q. Do you recall an instance where the    25 President of the United States made a comment in</p>	<p style="text-align: right;">Page 105</p> <p>1 MS. ZILIOLI: Objection; misstates    2 evidence, legal conclusion.</p> <p>3 A. I don't remember any of the details of    4 what you're talking about. I do remember, at some    5 point, asking logical questions to my team, "Hey, can    6 we still move this?" And I don't know the exact    7 numbers here, but I think at some point the vast    8 majority of this pipeline had already been in the    9 ground. All the permits had been done.</p> <p>10 We got down to the very, very last permit,    11 I think, or close to it, which was called this    12 408 easement, under the water of that particular    13 waterway. And so at that given point, I think there    14 was something called, like, the 20-mile limit or    15 something, but most of this pipe was already in the    16 ground. So the ability to flex this or to flux it with    17 any given area, I think my -- my team came back and    18 said, "This is the environmentally safest, logical    19 position to put this to balance both the needs of the    20 pipeline, but, more importantly, the protection of the    21 environment." I think my team pretty much said that's    22 not a viable solution.</p> <p>23 Q. (BY MR. SEBY) And did you make that --    24 that position known within the Administration?</p> <p>25 A. I certainly did not, no. I might have --</p>

July 26, 2022

<p style="text-align: right;">Page 106</p> <p>1 this is, again, where Ms. Darcy, being the political    2 appointee, she would have either carried that water or    3 represented our interest back up to somewhere else.    4 And it's probably important to realize, when was that    5 actual recommendation made. Obviously, with pipe going    6 in the ground every single day throughout the summer,    7 had that recommendation been made early on, there was    8 probably more ability to accommodate it. When that    9 recommendation was down to where the pipe was only    10 20 feet, 20 miles apart, then very, very little ability    11 to reroute.</p> <p>12 Q. Sure. And were you aware that the Corps'    13 interest or federal interest and involvement in the    14 pipeline only pertained to the federal Waters of the    15 United States for which it crossed?</p> <p>16 MS. ZILIOLI: Objection; assumes facts,    17 legal conclusion.</p> <p>18 A. So, I am aware of that.</p> <p>19 Q. (BY MR. SEBY) Okay. It's pretty commonly    20 observed by the Corps on their daily SITREPS for the    21 DAPL. It's just -- it's just, you know, there's    22 probably 50 of them where it acknowledges that. So    23 it's not speculative.</p> <p>24 Are you aware of -- so if the Corps' role    25 was right there in that zone of federal interest, who</p>	<p style="text-align: right;">Page 108</p> <p>1 some-odd percent of the route of the Dakota Access    2 Pipeline in North Dakota was not evaluated and    3 determined by the Corps of Engineers or any other    4 federal agency?</p> <p>5 MS. ZILIOLI: Objection; assumes facts,    6 legal conclusion.</p> <p>7 A. It doesn't surprise me; but again, it goes    8 back to, we stay in our lane. Whatever our authorities    9 are, that's where we would have a vote. If there are    10 other federal interests that have decisions on those    11 other parts, then that's out of my scope.</p> <p>12 Q. (BY MR. SEBY) So are you aware, sir, that    13 with respect to the siting of -- of oil pipelines in    14 the United States, that that decision is left to the    15 traditional land use authority of the state?</p> <p>16 MS. ZILIOLI: Same objections.</p> <p>17 A. I thought there was some federal agency,    18 maybe in DOE, that has some jurisdiction over    19 underground pipelines that don't affect waterways. But    20 I -- I don't think that's only a state authority. I    21 thought there was some -- not a bureau, but some agency    22 that has to do with -- I think it also goes back to    23 mining and ability to do subsurface emplacement.</p> <p>24 Q. (BY MR. SEBY) Would you -- would you be    25 surprised to understand that the siting of a pipeline</p>
<p style="text-align: right;">Page 107</p> <p>1 decided where to put the pipeline, site it, why to    2 locate it where, and why not to locate it other places?    3 Who made that decision?</p> <p>4 A. So I don't know the answer, but our    5 doctrine normally has the applicant figure out what    6 they want to do. And then -- and this is much more of    7 a consultation. So as we talk -- and this is a whole    8 part of the dynamic that we can certainly talk about,    9 but there were many, many different deliberations with    10 the Tribe, and with any pipeline developer, as to where    11 does that route go, what are the ramifications with    12 historic sites, where there's urban areas. So I was    13 not involved in any of that. That probably happened    14 years before I got here.</p> <p>15 But at some given point, I know that there    16 was a lot of discussions with Colonel Henderson and the    17 Tribe, prior to any of this, as to what their concerns    18 were. And I tend to remember that Colonel Henderson    19 said most of the time the Tribe didn't show up to    20 participate, because they didn't want to look like they    21 were part of the decision. So the best way to do that    22 is plausible deniability by saying, "We're not even    23 going to go."</p> <p>24 Q. Would it surprise you that the evaluation    25 and determination of whether to authorize the 90</p>	<p style="text-align: right;">Page 109</p> <p>1 is actually conducted by the agencies and authorities    2 of the state within the United States when there is no    3 federal interest involved?</p> <p>4 MS. ZILIOLI: Objection; assumes facts,    5 legal conclusion.</p> <p>6 A. I'm not surprised by that.</p> <p>7 Q. (BY MR. SEBY) Okay. Are you aware that    8 the State of North Dakota Public Service Commission, an    9 independent elected body, conducted a several-month-    10 long adjudication where a docket was opened and the    11 applicant, Energy Transfer, sought a permit from the    12 State of North Dakota Public Service Commission to    13 designate a -- an approved route, after an evaluation    14 of alternative routes and the State-evaluated criteria    15 that are set in the State's constitution and statutes,    16 which define the jurisdiction of the Public Service    17 Commission, which includes the siting of oil pipelines    18 within the State for public interest criteria?</p> <p>19 MS. ZILIOLI: Objection; assumes facts,    20 legal conclusion.</p> <p>21 A. So I've never heard of that agency, the    22 Public Service Commission. It doesn't surprise me that    23 any state would have such a similar capability. I have    24 no knowledge of anything of what you just said.</p> <p>25 MR. SEBY: Okay. Okay. We've now gone</p>

July 26, 2022

<p style="text-align: right;">Page 110</p> <p>1 for more than an hour. I'd like to take another 2 ten-minute break, if we may, sir, and Ms. Zilioli.</p> <p>3 THE DEONENT: So let's come back right at 4 the bottom of the hour. How does that sound?</p> <p>5 MR. SEBY: Great. That -- that's great. 6 That sounds good. See you then.</p> <p>7 THE DEONENT: Okay.</p> <p>8 THE VIDEOGRAPHER: Going off the record. 9 The time is 5:19 p.m. UTC, 11:19 a.m. Mountain. 10 (Recess, 11:19 a.m. to 11:33 a.m. MDT.)</p> <p>11 THE VIDEOGRAPHER: We're back on the 12 record. The time is 5:33 p.m. UTC, 11:33 a.m. 13 Mountain.</p> <p>14 Q. (BY MR. SEBY) General, we're back on the 15 record after a short break. And I provided to your 16 counsel certain emails. They're -- they're emails that 17 the United States produced to the State of North 18 Dakota.</p> <p>19 MR. SEBY: And the first one is 20 Exhibit 684, if we could put that on the screen, 21 please, for the General to see and for me to ask you 22 about, sir.</p> <p>23 THE REPORTER: And, Mr. Seby, are these 24 new exhibits or previously marked?</p> <p>25 MR. SEBY: This is a new -- new exhibit.</p>	<p style="text-align: right;">Page 112</p> <p>1 was a -- a response from General Spellmon to General 2 Jackson, that is the -- is the email above, which is 3 the one I want to ask you about. If you'd read that 4 for a minute. It's a short email. If you'd just check 5 it out, please.</p> <p>6 A. (Deponent examined document.) 7 So can you go down one more line -- a 8 couple more lines, please?</p> <p>9 (Deponent examined document.) 10 Okay. I got it.</p> <p>11 Q. Okay. So the -- here we are in (sic) 12 August 22nd and the -- General Spellmon is telling 13 General Jackson that he has -- relaying Colonel 14 Henderson's interactions with the Governor that 15 morning. And that while the email from General Jackson 16 was concerning the three affiliated tribes land 17 transfer, General Spellmon got into the Governor's 18 position on DAPL and the protests. And here at the end 19 of, well, the third week of August, General Spellmon is 20 telling General Jackson, "In short, his primary concern 21 is upholding the right to peaceful protest-AND-public 22 safety."</p> <p>23 He goes on to say, "The common assessment 24 from the field is the Standing Rock Sioux Tribe 25 protests have crossed the line and are no longer</p>
<p style="text-align: right;">Page 111</p> <p>1 THE REPORTER: Thank you. 2 (Deposition Exhibit 684, remotely 3 introduced and provided electronically to the court 4 reporter.)</p> <p>5 Q. (BY MR. SEBY) General, this is an email 6 from Donald Jackson to General Spellmon, dated 7 August 22, 2016. And I just wanted to ask you -- 8 you're not copied on this email, but I wanted to show 9 it to you, because -- and, first of all, would you 10 read -- there's -- there's two parts here. I only want 11 to ask you about the -- well, I think it's fair if we 12 start with the -- the one below, the first email in the 13 string. It's from General Jackson to Scott Spellmon, 14 copy to John Henderson. John Henderson is removed in 15 the final communication above, but the middle one is 16 what I want to ask you about.</p> <p>17 But here, I just -- just for context, 18 General Jackson is asking General Spellmon, at your 19 behest, it says, the "Chief asked me what position 20 Governor Dalrymple had taken on this issue." And 21 that's the -- the issue I think that they're talking 22 about is the Corps was evaluating whether to transfer 23 lands to the three affiliated tribes, which is not 24 involving the DAPL protest.</p> <p>25 But the interesting thing is that there</p>	<p style="text-align: right;">Page 113</p> <p>1 completely peaceful in nature." Do you see that? 2 A. I do. 3 Q. And he goes on to say the Governor has 4 made an emergency declaration that provides additional 5 resources to state agencies to deal with the protests. 6 It does not include activation of the National Guard. 7 And from Colonel Henderson's notes earlier 8 today, you saw where he asked that we -- "he," 9 referring to the Governor -- he asked that we strongly 10 consider denying any permits for staging/protest areas 11 on Corps property. Then he goes on to say, "I 12 understand Northwest District" -- that would be 13 Omaha -- "has received its first Special Use Permit 14 application and is working through that process now." 15 So here at the third week of August, you 16 know, a couple weeks after these people showed up on 17 the Corps property, the, quote, common assessment from 18 the field is that they've crossed the line and are not 19 peaceful. Why on earth would the Corps consider giving 20 that type of entity a special use permit to be on the 21 property? Do you know? 22 A. So I've never seen this email trail. We 23 do have an obligation to work with the -- I think 24 several entities all together; the tribal nation, the 25 state, and the federal agencies. We try to find</p>

<p style="text-align: right;">Page 114</p> <p>1 consensus. Just by reading this email, it sounds like    2 the State is not a fan. I imagine -- because the Tribe    3 must have either -- asked for the special permit. So    4 therefore, I'm not sure it's fair to the Tribe just to    5 completely deny it. So obviously, at this point, we're    6 probably trying to figure out how to proceed. But    7 that's only my conjecture.</p> <p>8       Q. Okay. Here we have the quote, "common    9 assessment from the field [that] the Standing Rock    10 Sioux Tribe protests have crossed the line and are no    11 longer completely peaceful in nature." Are you saying    12 that you're -- notwithstanding the behavior of the    13 applicants, that you're obligated to work with them    14 towards giving them a permit if they can rightfully    15 obtain one?</p> <p>16       A. I think we have fairness to any applicant    17 to try to go through that due diligence. I'm not sure    18 exactly what the elements of approval are for a permit.    19 I think it's key to remember that the line you just    20 highlighted, "The common assessment from the    21 field . . .," I read that as an extension of his    22 primary concern, i.e., the Governor; so, therefore, the    23 Governor's common assessment -- and probably "the    24 field" means North Dakota -- that it's not -- did cross    25 the line. So I don't think that's General Spellman's</p>	<p style="text-align: right;">Page 116</p> <p>1 Ms. Darcy, Chief, and Major General Jackson, "First    2 storyboard attached for the Dakota Access Pipeline    3 issue. Omaha District and Northwest Division [real    4 estate] were critical to its assembly. We intend to    5 generate [the] daily for now, and will endeavor to do    6 so by [the] end of the business day. Storyboard    7 addresses many of the questions being asked, including    8 background/nature of the protest, impact to [Corps    9 property], impact to DAPL construction, location of    10 protests relative to [the] Three Affiliated    11 Tribes . . ., and [the] way ahead. Thanks also to    12 Colonel Henderson and" -- "for his Commander's    13 assessment."</p> <p>14       So now I'd like to look at the actual    15 storyboard that is being transmitted to you and    16 Ms. Darcy, collectively, the Corps' leadership. So on    17 this, if we could get to the map.</p> <p>18       MR. SEBY: And, Rachel, could you --    19 before we talk about the text -- well, let's talk about    20 the text.</p> <p>21       Q. (BY MR. SEBY) You see the -- it talks    22 about the "Situation" up in the first --    23       MR. SEBY: Can you highlight that for the    24 General?</p> <p>25       Q. (BY MR. SEBY) Can you see that, General?</p>
<p style="text-align: right;">Page 115</p> <p>1 assessment. I think that's based on the discussions    2 that Henderson had with the Governor.</p> <p>3       Q. Okay. So you don't interpret the phrase    4 "the common assessment" to include any federal opinion,    5 then?</p> <p>6       A. I don't think it does. I think it would    7 have said something different than what it says here.</p> <p>8       Q. Okay. All right. Let's go on    9 to -- the next exhibit that I'd like to show you is    10 Exhibit 686.</p> <p>11       (Deposition Exhibit 686, remotely    12 introduced and provided electronically to the court    13 reporter.)</p> <p>14       Q. And this is an email with an attachment    15 that I want to show you in a moment.</p> <p>16       MR. SEBY: But if we could blow up the --    17 Rachel, please blow up the "To" and "From" for a    18 moment. There we are.</p> <p>19       Q. (BY MR. SEBY) So this is from    20 Ms. Durham-Aguilera, transmitting a Dakota Access    21 Pipeline Protest Storyboard dated August 23, 2016. And    22 it's addressed to Donald Jackson and you, sir, General    23 Semonite, and Ms. Darcy and Lowry Crook. Those are the    24 addressees of the email. And so the transmittal    25 message from Ms. Aguilera is short, and it says,</p>	<p style="text-align: right;">Page 117</p> <p>1       A. I can.</p> <p>2       Q. Okay. So here, it talks that the Corps    3 granted, as in has granted, two Section 408 permissions    4 for the DAPL project; already occurred July 25. So    5 here we are, approximately a month later, and that has    6 happened. And one gave consent for the flowage    7 easements held at the lake by the Corps, and the other    8 provided an easement to cross federal property for    9 flood control and navigation at Lake Oahe, North    10 Dakota.</p> <p>11       On August 10th, protesters started showing    12 up and beginning to interfere with the DAPL    13 construction on private land near Lake Oahe crossing.</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17       And then it says, "Additional Background."    18 Protesters set up, quote, spirit camps, plural, on    19 Corps property south of the pipeline construction site.    20 It does not say south of the Cannonball River. It says    21 south of the construction site. So the river -- both    22 north and south of the river are south of the    23 construction site. So that's a very general reference.</p> <p>24       Here, we then go to the map that's    25 provided as part of the -- the storyboard developed by</p>

July 26, 2022

<p>1 the Corps, as Ms. Aguilera described it.</p> <p>2 MR. SEBY: Rachel, yeah, could we blow</p> <p>3 that up a little bit so we could look at the legend?</p> <p>4 Q. (BY MR. SEBY) So there, it denotes the</p> <p>5 Corps property. U.S. Corps [Reservation] Project is</p> <p>6 noted in blue. And then when we look at the -- the</p> <p>7 inset map on there --</p> <p>8 MR. SEBY: Rachel, if you could go to that</p> <p>9 smaller inset right there.</p> <p>10 Q. (BY MR. SEBY) -- we see that on the date</p> <p>11 of this storyboard, which is the very first storyboard</p> <p>12 that Corps staff -- coming from Colonel Henderson, who</p> <p>13 gets a lot of credit for its development, and the Corps</p> <p>14 resources in the -- in the division, real estate</p> <p>15 division. So people who know what their property looks</p> <p>16 like have assembled this map and are providing it to</p> <p>17 you, as the chief, and to Ms. Darcy, as the Assistant</p> <p>18 Secretary of the Army for Civil Works.</p> <p>19 And the very first report that you and</p> <p>20 Ms. Darcy receive about the status of the Corps</p> <p>21 property is to note that there is a camp located on</p> <p>22 Corps property called "Camp North," and there's a camp</p> <p>23 located on Corps property called "Camp South." Do you</p> <p>24 see those?</p> <p>25 A. So I see Camp North. This makes me think</p>	<p>Page 118</p> <p>1 graphic shows. I've never seen this -- I haven't seen</p> <p>2 this storyboard in six years. Now, if it came to me, I</p> <p>3 certainly saw it six years ago. But you're giving me a</p> <p>4 lot, a lot of information here that I don't know if I</p> <p>5 can quickly analyze what you're trying to -- what</p> <p>6 you're trying to show. It looks like there's some</p> <p>7 area, obviously south of the water, that is called</p> <p>8 "Camp South."</p> <p>9 Q. Okay. Well, my view, because I'm reading</p> <p>10 the legend where it says, "Reservoir Project," it</p> <p>11 doesn't say "Reservoir Waterway" or anything like that.</p> <p>12 And so I -- I believe "Project" is referring to the</p> <p>13 Oahe Project, which includes water and project lands as</p> <p>14 part of the project. And so I believe what you are</p> <p>15 being told with this graphic and the narrative text is</p> <p>16 that there were camps on Corps property, and that's a</p> <p>17 depiction of them, camps plural.</p> <p>18 A. So a storyboard is a tool we use, put</p> <p>19 together by my ops team, to be able to give me a</p> <p>20 graphic array for things like hurricanes, tornadoes,</p> <p>21 and these kind of things. It's clearly the first one.</p> <p>22 Most of the time it's about two weeks into this when we</p> <p>23 get everything right.</p> <p>24 I probably would have asked the same</p> <p>25 questions you were. Let's blow it up more, let's have</p>
<p>Page 119</p> <p>1 that Camp South is on the Reservation.</p> <p>2 Q. It's -- it's not clear, though, is it,</p> <p>3 sir; because it's right there -- the arrow -- the tip</p> <p>4 of the arrow is right there on the border. So we --</p> <p>5 you don't know that it's on the Reservation, and I</p> <p>6 don't know that it's on the Corps property. Can we</p> <p>7 agree on that?</p> <p>8 A. So I guess the question is, what's the</p> <p>9 blue? Is the blue actually the water line? So when</p> <p>10 you say, "Camp South," by this graphic, it would look</p> <p>11 like Camp South is in the water.</p> <p>12 Q. Sir, back at the legend, the Corps legend</p> <p>13 says Corps Reservoir Project. It does not say only the</p> <p>14 water. So it includes the water and the project lands,</p> <p>15 would be the way I read that.</p> <p>16 A. Okay. I understand that. I understand.</p> <p>17 Q. You disagree with that?</p> <p>18 A. So that's probably the boundary of the</p> <p>19 Corps project. And the water is either -- it's hard to</p> <p>20 tell. The water is either inside where the dotted line</p> <p>21 is or something less than that. So I understand it's</p> <p>22 hard to understand by this graphic.</p> <p>23 Q. Are you going to disagree with me that</p> <p>24 Camp North is clearly on Corps-managed property?</p> <p>25 A. I don't have a clue of exactly what this</p>	<p>Page 121</p> <p>1 very clear graphics. I think it's -- if you're making</p> <p>2 the argument that this is saying it is or not, I'm not</p> <p>3 sure I understand the accuracy of these graphics. But</p> <p>4 I'm not trying to say that -- it's just hard to tell by</p> <p>5 looking at this graphic, by some captain who did this</p> <p>6 in a PowerPoint shot, probably at 3 o'clock in the</p> <p>7 morning.</p> <p>8 Q. Okay. Earlier, you told me you had a lot</p> <p>9 of faith in -- in the professionalism of Colonel</p> <p>10 Henderson. And that includes his -- the nature of his</p> <p>11 assessments. He didn't -- would you say Colonel</p> <p>12 Henderson was prone to hyperbole?</p> <p>13 A. I don't know what that means.</p> <p>14 Q. Do you think he made -- did you ever find</p> <p>15 him to gratuitously say things or make things up?</p> <p>16 A. Not at all.</p> <p>17 Q. Okay.</p> <p>18 A. I also want to clarify, the Corps is a</p> <p>19 very, very professional place. But most of the time,</p> <p>20 the first time I either see something or I hear</p> <p>21 something, it's always the first report. So I put very</p> <p>22 little credibility into the first things I see. But</p> <p>23 keep going. I certainly will entertain whatever you</p> <p>24 want me to try to answer here.</p> <p>25 Q. Okay. I just want to show you one thing,</p>

July 26, 2022

<p>1 and that is --</p> <p>2 MR. SEBY: Rachel, could we go back to</p> <p>3 the -- to the narrative text the Corps used on the</p> <p>4 right side? And come down to "Northwest Omaha</p> <p>5 Commanders Assessment." And could we blow that up for</p> <p>6 the General?</p> <p>7 Q. (BY MR. SEBY) So, General, the northwest</p> <p>8 commander in this instance is Colonel Henderson,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So what we're going to read here is</p> <p>12 his assessment, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. So here is what Colonel Henderson</p> <p>15 says as his assessment. "We expect the size and</p> <p>16 intensity of the protests to grow over the next 2 days</p> <p>17 leading into the Preliminary Injunction hearing."</p> <p>18 That's the September 9th decision that was ultimately</p> <p>19 made that you won. "The location of these</p> <p>20 encampments" -- plural -- "on U.S. Corps managed</p> <p>21 lands -- without a special use permit -- is considered</p> <p>22 trespassing and is effectively preventing DAPL from</p> <p>23 working in the area."</p> <p>24 First report you get, Colonel Henderson is</p> <p>25 telling you and Ms. Darcy, we have people camping on</p>	<p>Page 122</p> <p>1 Exhibit 688.</p> <p>2 (Deposition Exhibit 688, remotely</p> <p>3 introduced and provided electronically to the court</p> <p>4 reporter.)</p> <p>5 Q. (BY MR. SEBY) And this -- this is an</p> <p>6 email from Lowry Crook that is responding to an email</p> <p>7 from General Jackson, reporting to you and Ms. Darcy.</p> <p>8 And Crook weighs in that's it's okay with him if -- if</p> <p>9 you move to more periodic reports versus these daily</p> <p>10 storyboards. But that's not what I want to ask you</p> <p>11 about. What I want to ask you about is General</p> <p>12 Jackson's email to you and Ms. Darcy, where -- if you</p> <p>13 would take a moment and read -- read that, please.</p> <p>14 Come down to the body of General Jackson's email that</p> <p>15 begins "Madam Secretary/Chief."</p> <p>16 A. Yeah, got it. I'm working my way through</p> <p>17 it.</p> <p>18 Q. Yes, sir. Take your time.</p> <p>19 A. (Deponent examined document.) Okay.</p> <p>20 Q. Earlier, sir, I asked you if you knew who</p> <p>21 Mr. Michael Connor, the Assistant Secretary of the</p> <p>22 Department of the Interior was, and I believe you told</p> <p>23 me, "Don't recall his name. I just don't know who that</p> <p>24 guy is." And I appreciate that six years later you've</p> <p>25 moved on and -- but here, Mr. -- or General Jackson is</p>
<p>Page 123</p> <p>1 our lands, in more than one location, and these people</p> <p>2 do not have permission from me, the person who normally</p> <p>3 gives it, for them to be there. Attention, I'm</p> <p>4 reporting that to you, sir. That's what -- that's</p> <p>5 what -- the information that you're provided on this</p> <p>6 date, August 24th. And the report comes from the day</p> <p>7 prior, August 23.</p> <p>8 You, sir, did you not read this? I'm not</p> <p>9 going to assume that you did; so I want to ask, would</p> <p>10 it -- would it have been unusual for you not to have</p> <p>11 read this?</p> <p>12 A. I normally peruse these documents. The</p> <p>13 volume of what I was running at that time probably</p> <p>14 never let me have more than, you know, five minutes on</p> <p>15 some of these. At this point, I would probably have</p> <p>16 gotten a perception that Henderson knows what he's</p> <p>17 doing here and will let the staff continue to work it</p> <p>18 out.</p> <p>19 Q. Did you ever recall you or Ms. Darcy</p> <p>20 disputing the veracity of the information that was</p> <p>21 being provided to you?</p> <p>22 A. I don't think so, no.</p> <p>23 Q. Okay. I understand. All right. Thank</p> <p>24 you.</p> <p>25 MR. SEBY: Could we please go to</p>	<p>Page 125</p> <p>1 saying that, "Tracking your call" -- he's referring</p> <p>2 to -- the "your" is at least Ms. Darcy and yourself --</p> <p>3 "call with Mr. Connor following his discussion with</p> <p>4 Governor Dalrymple."</p> <p>5 Now that you've seen this and are</p> <p>6 refreshed about having had a call with the Assistant</p> <p>7 Secretary of the Department of the Interior regarding</p> <p>8 his discussion with the Governor of the State of North</p> <p>9 Dakota, what can you tell me about your call with</p> <p>10 Mr. Connor?</p> <p>11 A. Yeah. So I don't believe I ever had a</p> <p>12 call. It's not abnormal that when somebody writes</p> <p>13 somebody, they put the other counterpart on the "To"</p> <p>14 line. So here, I think we're talking about Darcy's</p> <p>15 call with Connor. I think Connor came back alive here</p> <p>16 about a year ago, and I believe that might be the same</p> <p>17 Conner that's now the ASA (CW). But I don't think I</p> <p>18 ever knew Connor's name or BIA.</p> <p>19 So I'm not sure -- I don't think I ever</p> <p>20 had that call. And this is a regular update from Ed to</p> <p>21 Ms. Darcy, and I would almost consider me as a "cc." I</p> <p>22 don't think I ever acted on this email whatsoever. I</p> <p>23 don't know if I responded or not.</p> <p>24 Q. Okay. All right. But the bottom line is,</p> <p>25 this reference to "your call," it did not include you,</p>

July 26, 2022

<p style="text-align: right;">Page 126</p> <p>1 even though you're being addressed as an -- as an 2 addressee, right?</p> <p>3 A. Yeah. Ms. Darcy and I very, very seldom 4 ever did joint calls. It would either be normally her 5 or me. But very seldom did we both have a call. And I 6 think this is clearly her phone call with Connor.</p> <p>7 Q. Okay. Got it. All right. Okay.</p> <p>8 MR. SEBY: If we could go to Exhibit 689, 9 please.</p> <p>10 (Deposition Exhibit 689, remotely 11 introduced and provided electronically to the court 12 reporter.)</p> <p>13 MR. SEBY: If we can come down to the 14 bottom of the email. That's the only thing I really 15 want to ask you about. Oh, I'm sorry, not -- not that 16 storyboard. We've already looked at that in the 17 previous email. Right there.</p> <p>18 Q. (BY MR. SEBY) Mr. -- or Major General 19 Jackson is conversing with -- it starts off with Lowry 20 Crook talking about a conversation he had. And that's 21 not what I want to ask you about. I want to ask you 22 about the one just above it, where General Jackson, on 23 September 5, 2016 -- and I know you're not copied on 24 this email, but I'm going to ask you about the subject 25 matter.</p>	<p style="text-align: right;">Page 128</p> <p>1 announced it was going to decide on September 9th. So 2 Ms. Darcy meeting with the Secretary of the Interior 3 and then heading over to the White House, is this a -- 4 an indication, do you believe, sir, to the workings of 5 the interagency group that was putting together what 6 ultimately became the September 9th announcement just a 7 few days later; notwithstanding the outcome of the 8 court case -- and, geez, you won -- but notwithstanding 9 that, Ms. Darcy made that, was party to -- committed 10 the Army to be party to the Joint Statement on 11 September 9th with the Department of the Interior and 12 the Department of Justice?</p> <p>13 MS. ZILIOLO: Objection; speculation, 14 foundation.</p> <p>15 Q. (BY MR. SEBY) I'm not asking you to 16 speculate. I'm asking you whether you know that?</p> <p>17 A. So, I don't know that. But by the way I'm 18 reading this, it appears that what I said a couple 19 hours ago has some credibility. Clearly, the 20 interagency was thinking through what was going to 21 happen in that announcement and prepping the 22 battlefield to be able to react. Clearly, we know they 23 did issue a statement, but I would have envisioned that 24 they would have an alternative position, given the fact 25 that the decision was the other way around.</p>
<p style="text-align: right;">Page 127</p> <p>1 On August -- or, pardon me, September 5, 2 2016, General Jackson says to Karen, who is Karen 3 Aguilera, "Karen, Need an update on DAPL from Omaha 4 before noon tomorrow. Secretary Darcy has a 5 1300 Principals Meeting with Department of Interior" -- 6 using the acronym DOI -- "and they follow on at the 7 White House" -- I don't know what "o/a" means -- 8 "1500."</p> <p>9 A. On or about.</p> <p>10 Q. On or about 1500. "I told the G3" -- what 11 is the G3?</p> <p>12 A. So the G3 is the terminology in the Army 13 for the Operations section. So in USACE, that is the 14 same as when I said a couple hours ago about the 15 Emergency Operations section. Ms. Karen D-A, she was 16 the leader of the Operations team.</p> <p>17 Q. Okay. Okay. So here we have General 18 Jackson telling Ms. Aguilera that the Secretary, 19 Ms. Darcy, has a meeting with the Department of the 20 Interior and a follow-up at the White House tomorrow, 21 which would be on September 6th. And, "I told the G3 22 to begin the daily updates once we get word [on] a 23 decision is imminent on the Injunction. Could be as 24 early as Wednesday."</p> <p>25 And that's right, because the court</p>	<p style="text-align: right;">Page 129</p> <p>1 I don't read this to say principals, as in 2 the Secretary of DOI. A lot of times the principals, 3 just like how we wouldn't have the Secretary of the 4 Army go into that meeting, I imagine the principal is 5 probably some high-level staffer inside DOI, a 6 Ms. Darcy equivalent.</p> <p>7 Q. Sure. So maybe not the Secretary, but 8 maybe the Secretary's Chief of Staff, for example?</p> <p>9 A. Or, you know, I don't know what you said 10 Jewell's job was. Maybe -- I don't know whether she 11 was DOI. It might have been a BIA guy or whatever it 12 is; but somebody obviously important enough to act on 13 behalf of the Secretary.</p> <p>14 Q. Yeah, yup, yup. Okay. All right.</p> <p>15 MR. SEBY: If we could go to Exhibit 690, 16 please.</p> <p>17 (Deposition Exhibit 690, remotely 18 introduced and provided electronically to the court 19 reporter.)</p> <p>20 Q. (BY MR. SEBY) Okay. If we could go down 21 to the -- in the chain where there is -- hold up there 22 for a second. What this is is a -- and I don't want to 23 ask you about this, because it's long and has a bunch 24 of things that are not relevant. But there is a -- a 25 document being transmitted by an individual in the</p>

July 26, 2022

<p style="text-align: right;">Page 130</p> <p>1 Corps, Patrick Seiber, Seiber (pronouncing), to the    2 Secretary of the Army, Eric Fanning, and General    3 Milley. And it's entitled "September 8th MRD    4 [Monitoring] Report." What does that mean, MRD?</p> <p>5 A. So every morning, the Public Affairs team    6 in the Army informs the Secretary and the Chief of    7 Staff of the Army of critical articles that probably    8 have happened in the last 24 hours. I don't know the    9 date of this. It looks like -- I don't know whether    10 this is a midweek. If it's a Monday morning, then it    11 would have been Saturday and Sunday. I think it's --    12 MRD is something like morning -- I don't know what that    13 means. But the -- Seiber is not a Corps person. Pat    14 was actually the colonel that put this together on the    15 Army staff for the senior leadership of the Army. This    16 comes out every morning at about 6 o'clock or 7 o'clock    17 in the morning.</p> <p>18 Q. Sure. And the date says, right there,    19 it's on a Thursday. Thursday morning, 6:46 p.m. --    20 a.m., so it's early. And what you just said makes    21 sense, that it's a -- a -- it's a -- kind of a    22 chronology of articles that appeared in the media in    23 the last 24 hours, provided as a report to the    24 Secretary of the Army and the Chief of Staff, General    25 Milley. So I don't want to ask you about that.</p>	<p style="text-align: right;">Page 132</p> <p>1 to get this to the PENTAGON by 0800 tomorrow and give    2 to ALLAN WEBSTER so I can have at the 0900 session    3 with" the Secretary of the Army and the Chief of Staff    4 of the Army.</p> <p>5 So you're -- if I understand this    6 correctly, the next day, you're wanting a map, because    7 you have a meeting in the morning with Secretary    8 Fanning and Chief of Staff of the Army, General Milley;    9 is that correct?</p> <p>10 A. So just a couple things. I definitely got    11 this message every single morning. Most of the time    12 the Army doesn't like to put 50 people on the "cc"    13 line, so they put it on a blind line. So I -- I was    14 routinely getting this. Every single day, I would    15 probably forward anything that had to do with the    16 Corps, to my team. I always wrote on the subject line,    17 is this for information, is it guidance, is it a    18 tasker, or is it a calendar issue. So this is very    19 routine of how I work, what's going on. This gives me    20 the impression that I either didn't see that first    21 storyboard or I didn't really read it, because I'm    22 actually asking something very similar to what was on    23 the storyboard.</p> <p>24 I also remember every single -- I think at    25 the time it was Monday, Wednesday, and Friday, we had a</p>
<p style="text-align: right;">Page 131</p> <p>1 But somehow you got this. And you're not    2 copied on the distribution, but you got it. And I know    3 that, and you know that, because you took it and    4 forwarded it on in the next email.</p> <p>5 MR. SEBY: If we could go up, Rachel, the    6 next email from General Semonite to General Jackson,    7 copied to some people.</p> <p>8 Q. (BY MR. SEBY) But you changed the subject    9 line from that "MRD" line, you changed it, sir, to say,    10 "Lieutenant General Semonite Tasker - Laydown of    11 Protest Site." And then you kept the MRD reference.    12 But you go on to say in the email, "ED:" -- Ed    13 Jackson -- "Please see #4 below . . .," referencing the    14 articles in the -- the MRD report. And No. 4 happens    15 to talk about the title of it. All I want to mention    16 is the title, "WHILE AWAITING PIPELINE RULING, NORTH    17 DAKOTA RECRUITS LAW OFFICERS TO HELP GUARD SITE OF    18 PROTEST THAT TURNED VIOLENT OVER THE WEEKEND."</p> <p>19 So that's the article being given to the    20 Secretary of the Army and the Chief of the Staff --    21 Chief of Staff. And you are calling out that article    22 and tasking staff to get you a map, "a big map that I    23 can see both the TRAIL of the PIPELINE . . . the    24 3 percent that we control, the actual site of the    25 protests, the 20 mile exclusion zone. I would like you</p>	<p style="text-align: right;">Page 133</p> <p>1 routine Army staff meeting with the Secretary of the    2 Army, the CSA, and all of the Army staff. So this is    3 not a special DAPL meeting. This was the regular,    4 normal 9 o'clock meeting. But I wanted to always have    5 a graphic. So at some time during these meetings,    6 the -- you know, General Milley would say, "Todd,    7 what's going on here? See me afterward and show me    8 what's happening."</p> <p>9 So Allan Webster was the colonel that was    10 currently in the Pentagon, worked there all the time,    11 and he was my inside guy to be able to ensure the    12 Pentagon leadership understood what was happening. So    13 this is probably exactly as you summed it up; what's    14 going on, give me the map so I can understand how this    15 is playing out.</p> <p>16 Q. Yup. And I wasn't suggesting that even    17 though you were given the storyboard two weeks    18 earlier -- because that's August 24th and here we are    19 September 8th, by my count, that's two full weeks    20 later -- I wasn't suggesting that you didn't know what    21 it said and the camps and all that stuff. But all I'm    22 saying is that -- and thanks for that clarification.    23 You were bcc'd this, so it was normal for you to get    24 it. But you did change the subject line to add to    25 General Jackson a -- you reference it as a "Tasker."</p>

July 26, 2022

<p>1 <b>What is a tasker?</b></p> <p>2 A. So the worst thing a leader can do is to 3 be vague and ambiguous. So like I told you, every 4 single email of mine -- you can go back and look -- I 5 would say, "Semonite info. Here is something that's 6 happening. It's for your information. Here is 7 guidance."</p> <p>8 Okay. If it's a tasker, it means you owe 9 me a product. I normally am very clear with the 10 person's first name. I normally give them a suspense. 11 And all of my staff knew that if there was ever a time 12 I gave them a tasker and they didn't understand it, it 13 was on them to come back and to ask for more -- more 14 operations -- or for more clarity. I was doing about a 15 hundred emails a day during this period, or my entire 16 tenure, so I had to write relatively short and 17 succinct. But that set the conditions for the staff 18 now to act on this, so I could then have a product, 19 when needed, to be able to brief Army leadership.</p> <p>20 Q. Yeah, I -- I understand. So a tasker, 21 which is the question, is a directive from the chief of 22 engineers, to the addressee; in this case, General 23 Jackson?</p> <p>24 A. Exactly right. And I think it's also 25 important to amplify here, you know, some people have</p>	<p>Page 134</p> <p>1 happening. So I want to make sure that I'm setting the 2 stage to be able to either advise them what to do or 3 make sure that they're aware that something could 4 happen on their watch.</p> <p>5 Q. Yup, I understand. I understand. I got 6 that impression loud and clear from your email 7 directing General Jackson to get you a map so you could 8 see from that map where certain things were going on, 9 right?</p> <p>10 A. Correct.</p> <p>11 Q. And so you say, "On the map" -- and I'm 12 referring to the second paragraph of your email to 13 Major General Jackson, you say, "On the map . . . or 14 some other GRAPHIC . . . make sure I know WHERE the 15 protesters are . . . and WHOSE LANDS is our land." So 16 you were trying to assess whether or not protesters 17 were on your land, correct?</p> <p>18 A. I think that's what I was trying to get to 19 here. And I do much, much better with -- with maps. 20 When we talk about graphics, the military uses a lot of 21 sketches, PowerPoint graphics. I don't want to use 22 words; I want to see a -- a laydown.</p> <p>23 Q. Yeah, yeah. So you weren't expecting 24 anything but a visual that -- that answered your 25 directive to say, "I want to know where our land is,"</p>
<p>Page 135</p> <p>1 different ways of -- of working. I have been using 2 capital letters for 20 years. Okay. It's kind of like 3 how I talk.</p> <p>4 Q. Yeah.</p> <p>5 A. I want to amplify certain things, so 6 that's why you'll see certain words that are out here 7 so that -- I always try to communicate so as to not be 8 misunderstood.</p> <p>9 Q. Yeah. You -- you prefer to be candid 10 and -- and clear?</p> <p>11 A. I do.</p> <p>12 Q. Of course. And that's sort of a value 13 that is inherent in military command structures, too, 14 isn't it?</p> <p>15 A. It is. I think the other thing to note, 16 I've been in the Army for 41 years and 4 months. You 17 can't be successful by trying to work all actions. I 18 told you a couple hours ago, I probably worked about 19 5 percent, but I waited for those to escalate to where 20 I thought it was at the point that me, as a three-star 21 general, needed to be involved.</p> <p>22 So at this point now, the Army leadership 23 appears -- and I didn't read Article 4, I'm not sure 24 exactly what it says, No. 4 below, but at some point 25 now, the Army leadership is aware something is</p>	<p>Page 137</p> <p>1 and I want to know where the protest camps are relative 2 to it." Is that right -- is that what you're saying?</p> <p>3 A. That's correct.</p> <p>4 Q. And did you get that material from General 5 Jackson in time for your meeting on the next day; 6 which, wow, was September 9th, an interesting day of 7 parallels? Did you meet with the Secretary of the Army 8 that morning and give them a -- show them a map?</p> <p>9 A. So, I don't remember that. But these 10 meetings were almost always on time, almost never 11 canceled. If somebody couldn't go, they would have a 12 deputy there. So unless you show me something 13 otherwise, I'm assuming I went. And I hate to say it 14 like this, but normally when a three-star asks a 15 two-star to do something, everybody reacts. I mean, we 16 were exceptionally responsive. I imagine they probably 17 used a graphic that was in that storyboard as a 18 starting point. But I'm assuming that I got what I 19 asked for here.</p> <p>20 Q. Yeah, sure. And I can't tell you for 21 sure, because we weren't given the -- the information 22 from your counsel as to what General Jackson did in 23 response to this. We just know that he forwarded it on 24 and got -- got the staff busy working on getting you 25 what you asked for and --</p>

July 26, 2022

July 26, 2022

<p>1 evidence.</p> <p>2 A. So I haven't seen these emails in six</p> <p>3 years. But this is normally the way I operate, so this</p> <p>4 is all very consistent with my command philosophy and</p> <p>5 how I do things. So I think everything you're saying</p> <p>6 right now is -- is exactly right on track.</p> <p>7 Q. (BY MR. SEBY) Okay. Thank you, sir.</p> <p>8 I -- I just was trying to get some clarification about</p> <p>9 the situation. I wasn't being argumentative or</p> <p>10 disagreeable to you; just trying to get to the bottom</p> <p>11 of it.</p> <p>12 MR. SEBY: Let's go to 494, Exhibit 494.</p> <p>13 Q. (BY MR. SEBY) Okay. This is an exhibit</p> <p>14 that is a -- a release by the United States Department</p> <p>15 of the Interior, dated Friday, September 9th, 2017 --</p> <p>16 2016. And it's addressed to Sally Jewell's email</p> <p>17 address in the Department of the Interior. SRJ is</p> <p>18 Ms. Jewell, her email. We know that from her</p> <p>19 deposition. And Ms. Jewell was sent this announcement,</p> <p>20 which is a presentation of the Joint Statement from the</p> <p>21 Department of Justice, the Department of the Army, and</p> <p>22 the Department of the Interior, regarding Standing Rock</p> <p>23 Sioux Tribe versus United States Army Corps of</p> <p>24 Engineers.</p> <p>25 And I was interested in this particular</p>	<p>Page 142</p> <p>1 Q. (BY MR. SEBY) Do you know, sir?</p> <p>2 A. So I'm speculating, but I will tell you</p> <p>3 there doesn't have -- the renowned expert in water</p> <p>4 areas is the Corps of Engineers; 247 years, everybody</p> <p>5 knows the Army Corps crest. I think that this was done</p> <p>6 either by mistake or an attempt to give credibility to</p> <p>7 the document that the leadership of the Corps of</p> <p>8 Engineers, which is a self-contained organization that</p> <p>9 works for the Army, is making this statement.</p> <p>10 So I -- I don't know where you're going</p> <p>11 with it, but if somebody were to ask me, "Are you going</p> <p>12 to allow your crest to be up there," I would say, "Put</p> <p>13 the Army crest up there."</p> <p>14 Q. Yeah. I just was curious, because the</p> <p>15 title of the statement says the Department of the</p> <p>16 Interior, Justice, and Army, but then the crest doesn't</p> <p>17 match consistent with that. I don't know why, I was</p> <p>18 just wondering if you knew.</p> <p>19 So anyhow, and then when you look at the</p> <p>20 Joint Statement text itself, it says -- if you would,</p> <p>21 sir, read it again. I know it's been six years since</p> <p>22 you have, probably, but if you would take a moment and</p> <p>23 read it. It's -- it's pretty short.</p> <p>24 A. (Deponent examined a document.)</p> <p>25 Okay. Go ahead.</p>
<p>1 document, because when you get down below, the -- the</p> <p>2 heading on the Joint Statement, if you can see it right</p> <p>3 there -- I'm sorry, it's right --</p> <p>4 MR. SEBY: Rachel, it's the upper part of</p> <p>5 the screen now. Right there.</p> <p>6 Q. (BY MR. SEBY) The Joint Statement from</p> <p>7 the three departments, it says -- in addition to the</p> <p>8 Corps -- pardon me, in addition to the Department of</p> <p>9 the Interior and Justice, it says, plainly, the</p> <p>10 Department of the Army, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. And so what I want to show you is</p> <p>13 why I'm puzzled. If we could go back up to the top of</p> <p>14 the email where the agencies' crests are displayed, we</p> <p>15 all see the Department of the Interior; buffalo, famous</p> <p>16 buffalo, pointing -- pointing to the left. And then we</p> <p>17 see the crest of -- of the Department of Justice,</p> <p>18 but -- which matches the title of the Joint Statement.</p> <p>19 But I'm wondering if you know the answer to why, when</p> <p>20 this is apparently a Joint Statement of the Department</p> <p>21 of the Army, why is the unitary crest of the Army Corps</p> <p>22 of Engineers there and not the Department of the Army</p> <p>23 crest?</p> <p>24 MS. ZILIOLI: Objection; speculation,</p> <p>25 foundation.</p>	<p>Page 143</p> <p>1 (Pause.)</p> <p>2 A. Okay.</p> <p>3 Q. So that's the end of it.</p> <p>4 A. So I read that pretty fast. I certainly</p> <p>5 understand the general message there. But if we need</p> <p>6 to, we might have to go back, if there's -- if you're</p> <p>7 going to ask me specifics on something.</p> <p>8 Q. No. I just wanted to ask you, do you</p> <p>9 recall this now? Up until now, I've been asking you</p> <p>10 about the -- the infamous September 9th Joint</p> <p>11 Statement. Now that you've read it, do you recall it</p> <p>12 as correct with what we've been talking about?</p> <p>13 That's -- that's the statement?</p> <p>14 A. Yeah. So if you were to ask me an hour</p> <p>15 ago, "What would the statement look like," I wouldn't</p> <p>16 be able to answer the question. But clearly, I read it</p> <p>17 and I certainly understand and know that this document</p> <p>18 came out.</p> <p>19 Q. Yup, yup. And I -- I'm just observing</p> <p>20 with you that the title says that it's the Army --</p> <p>21 Department of the Army. And then in the body of the</p> <p>22 text of the statement itself, second paragraph, it</p> <p>23 says -- well, the last sentence of the first paragraph</p> <p>24 says, "Therefore, the Department of the Army, the</p> <p>25 Department of Justice, and the Department of the</p>

July 26, 2022

<p style="text-align: right;">Page 146</p> <p>1 Interior will take the following steps."</p> <p>2 Second paragraph, "The Army will not</p> <p>3 authorize constructing the DAPL pipeline on Corps land</p> <p>4 bordering or under Lake Oahe until it can determine</p> <p>5 whether it will need to reconsider any of its previous</p> <p>6 decisions regarding the Lake Oahe site under" -- "under</p> <p>7 the National Environmental Policy Act or other federal</p> <p>8 laws."</p> <p>9 It talks about the Army this and the Army</p> <p>10 that. It does not say the Corps of Engineers, does</p> <p>11 it?</p> <p>12 A. It does not.</p> <p>13 MR. SEBY: Okay. If we could go to</p> <p>14 Exhibit 694, please.</p> <p>15 (Deposition Exhibit 694, remotely</p> <p>16 introduced and provided electronically to the court</p> <p>17 reporter.)</p> <p>18 A. I think while you're doing that, it's also</p> <p>19 critical to point out that this is what I was</p> <p>20 remembering, where I talked about consultation and the</p> <p>21 need for -- should the federal government reconsider</p> <p>22 some of the parameters as to how these pipelines are</p> <p>23 approved.</p> <p>24 Q. (BY MR. SEBY) What do you mean by making</p> <p>25 that additional comment, sir? I -- I -- I</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Oh, okay. All right. So you are sending</p> <p>2 to those gentlemen, copying a very large group, an</p> <p>3 email from you entitled: Chief of Engineers and the</p> <p>4 U.S. Army Corps of Engineers Update for September 11,</p> <p>5 2016. And you are reporting on a number of topics.</p> <p>6 And one of them that you mentioned is, "We're . . .</p> <p>7 closely monitoring the DAKOTA ACCESS PIPELINE situation</p> <p>8 and [the] Friday" -- "Friday's court decision." And</p> <p>9 then you talk about the 1200-mile pipeline and so</p> <p>10 forth.</p> <p>11 So I -- and this follows the meeting that</p> <p>12 you would have had two days prior with the Secretary.</p> <p>13 Do you think that General Allyn would have been present</p> <p>14 in that meeting you had on September 9?</p> <p>15 A. He normally would go along with</p> <p>16 Secretary -- Assistant Secretary Murphy. Now, again,</p> <p>17 somebody might have been out of town. But just to</p> <p>18 clarify, every member of the Army staff normally wrote</p> <p>19 a SITREP every two weeks. So I, personally, wrote</p> <p>20 this. And this -- because there's so many on the "cc"</p> <p>21 line, that is the Army staff.</p> <p>22 And it was our battle rhythm to continue</p> <p>23 to make sure that the secretariat and the generals on</p> <p>24 the Army staff understood what each of the other</p> <p>25 commands were doing. This got to be a lot, a lot of</p>
<p style="text-align: right;">Page 147</p> <p>1 understand --</p> <p>2 A. I wasn't sure where I remembered that</p> <p>3 coming up, but I think this is what I was alluding to;</p> <p>4 is that there was some question on consultation with</p> <p>5 the tribes that was introduced into this particular</p> <p>6 memo.</p> <p>7 Q. Yup. I think earlier you also told me</p> <p>8 that Colonel Henderson attempted, during the course of,</p> <p>9 I don't know, a couple years prior to this, to consult</p> <p>10 with the tribes. But they didn't have a lot of</p> <p>11 interest, did they?</p> <p>12 A. That was my understanding.</p> <p>13 Q. Yup. Understand, sir. Okay. We're at --</p> <p>14 we're at Exhibit 694, which is a very long distribution</p> <p>15 list email from you, sir, dated September 11th, on a</p> <p>16 Sunday. And it's sent -- the addressees are really</p> <p>17 only two people, copied to an enormous number of</p> <p>18 people. I only want to point out, one of the copy</p> <p>19 recipients is Ms. Darcy. But the addressees are</p> <p>20 Patrick Murphy and General Allyn. You've told me who</p> <p>21 General Allyn is. Could you advise me who Mr. Murphy</p> <p>22 is?</p> <p>23 A. Mr. Murray -- Murphy was Secretary</p> <p>24 Fanning's deputy. He was called the Assistant</p> <p>25 Secretary of the Army.</p>	<p style="text-align: right;">Page 149</p> <p>1 reports. I'm not sure how many people ever read them.</p> <p>2 But this is my attempt to inform Army leadership of</p> <p>3 either good things the command was doing or potential</p> <p>4 issues that might cross their desk.</p> <p>5 Q. Yeah, yup. Okay.</p> <p>6 MR. SEBY: If we could go to Exhibit 420,</p> <p>7 please. And if we go to the attachment to this email.</p> <p>8 It's just a transmittal email. It's got some --</p> <p>9 Rachel, if we could go to the end there, please.</p> <p>10 Q. (BY MR. SEBY) After the social media</p> <p>11 graphics is a letter. General, this is a letter I'm</p> <p>12 going to ask you to please read in a moment, but let me</p> <p>13 just introduce it. Letter dated September 14, 2016</p> <p>14 from -- and it's on a letterhead that is interesting,</p> <p>15 in that it has the congressional delegation; the</p> <p>16 Republican United States Senator, a Democrat United</p> <p>17 States Senator, and a Congressman, North Dakota's only</p> <p>18 Congressperson, Kevin Cramer. And then, also, it's</p> <p>19 joined by the Governor of the State of North Dakota,</p> <p>20 Jack Dalrymple, on September 14th.</p> <p>21 The addressees of the letter are Attorney</p> <p>22 General of the United States, Loretta Lynch; Sally</p> <p>23 Jewell, the Secretary of the Department of the</p> <p>24 Interior; and Jo-Ellen Darcy, the Assistant Secretary</p> <p>25 of the Army for Civil Works. And then if you would,</p>

July 26, 2022

<p style="text-align: right;">Page 150</p> <p>1 please, read the letter from the three Congresspeople 2 and the Governor.</p> <p>3 A. (Deponent examined document.) Okay. Go 4 ahead.</p> <p>5 Q. Okay. Did you see this letter?</p> <p>6 A. I don't remember this specific letter, but 7 these things crossed my desk quite often. The person 8 that sent this, Jen Greer, was the equivalent of a -- 9 she was my congressional liaison. I don't know whether 10 I'm on that "cc" or not, but I probably was certainly 11 informed on it. But I think at some point this request 12 is what Senator Hoeven and eventually Congressman 13 Cramer, who became Senator Cramer, continued to act on 14 through the tenure of my four years in command.</p> <p>15 Q. Yeah. So you read that -- the statement 16 that these individuals, the elected Senators and 17 Congressman and the Governor of the State, are not 18 happy with the September 9th announcement, are they?</p> <p>19 A. So I'm not sure I see that in there. It 20 says that we urge you to follow through on your joint 21 release and immediately start thinking cost share. So 22 "unhappy" is maybe a stretch. I will let the letter 23 stand for itself. But I think the bold letters are 24 relatively self-explanatory.</p> <p>25 Q. Yeah, they are. I agree. "As a result of</p>	<p style="text-align: right;">Page 152</p> <p>1 narrative is different than the three icons or the 2 three people in that press release.</p> <p>3 Q. (BY MR. SEBY) Sure; because the Corps put 4 its logo up there, not the Army. Does the -- does the 5 Army -- Department of the Army not have a logo?</p> <p>6 A. Let me rephrase that. The Corps didn't 7 put the logo up. Whoever caused -- whoever generated 8 that press release put the Corps up.</p> <p>9 Q. Yeah. All I'm saying is, I don't -- I 10 don't want to speculate why they chose to reference the 11 Corps; but so what, it really doesn't matter. They're 12 asking to meet with the Corps. And Ms. Darcy is an 13 addressee of the letter and a subject of the request 14 for a meeting, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. So I asked -- I deposed Ms. Jewell 17 and I deposed Ms. Darcy. I talked to them about this 18 letter, and neither of them recalled any measure of 19 action to acknowledge it to the two Senators, the 20 Congressman, or the Governor. Do you believe 21 differently? Did they -- did they respond in any 22 manner?</p> <p>23 MS. ZILIOLI: Objection; misstates 24 evidence, assume facts.</p> <p>25 A. I just don't know. I just don't know.</p>
<p style="text-align: right;">Page 151</p> <p>1 your delay . . .," so that's referring to the 2 September 9th announcement, that the final 3 authorization would be withheld indefinitely, is what 4 they say. So they say, "As a result of that delay, 5 North Dakota is experiencing a strain on its law 6 enforcement resources." And they go on to say, "We 7 urge you to follow through on your joint release and 8 begin planning immediately to cost share reimbursement 9 and manpower that will be needed to support [us] . . . 10 as [we] continue to provide public safety."</p> <p>11 In addition, we want a meeting with you to 12 discuss this matter and work a solution, ". . . as the 13 Administration's unprecedented announcement warrants 14 further [consideration]." I take that as being -- this 15 is a -- a letter expressing strong concern. Would you 16 agree with me on that?</p> <p>17 MS. ZILIOLI: Objection, speculation.</p> <p>18 A. I do. I think it's also interesting to 19 note that, going back to your earlier point, we request 20 a meeting with the Department of Justice, that's a 21 political appointee, the Department of the Interior. 22 It doesn't say the Department of the Army. They now 23 have converted to the Army Corps of Engineers. I think 24 a lot of that goes back to the reputation the Corps has 25 of working with the states. But notice how that</p>	<p style="text-align: right;">Page 153</p> <p>1 When we get a letter from an elected official, it is 2 not our desire, it is incumbent on my staff or my 3 previous staff to be able to be responsive and to 4 answer back. So our normal process would have been to 5 follow up, even if not asked, knowing that Hoeven and 6 the rest of the team are asking for a meeting to be -- 7 certainly be available for a meeting; and probably even 8 to the point of saying, "If you're not going to have a 9 meeting, then you need to -- you need to respond to 10 the letter," because I don't want the Corps to be the 11 one with a black eye of not meeting with these four 12 elected people.</p> <p>13 Q. (BY MR. SEBY) Yup. And I gathered that 14 from other correspondence of yours I've read, that that 15 was a stated position of yours. I saw it on several 16 occasions. So I -- I appreciate that's your view. 17 Would you be irritated, then, General, to know that 18 nobody responded to -- to this letter and that there 19 never was facilitation of the meeting that the two 20 Senators, the Congressman, and the Governor requested, 21 ever?</p> <p>22 MS. ZILIOLI: Objection; assume facts, 23 misstates evidence.</p> <p>24 Q. (BY MR. SEBY) If you know otherwise -- 25 A. I think I --</p>

July 26, 2022

<p style="text-align: right;">Page 154</p> <p>1       Q. -- please -- please enlighten me.</p> <p>2       A. I think I would probably use a more</p> <p>3 politically sensitive word, as opposed to being</p> <p>4 "irritated." I think it's bad policy on behalf of the</p> <p>5 federal government of not acting on, in some manner,</p> <p>6 even to say no, to a request from four distinguished</p> <p>7 people from that state.</p> <p>8       Q. Yes, sir.</p> <p>9       MR. SEBY: If we could go to -- to</p> <p>10 Exhibit 26, please.</p> <p>11       Q. (BY MR. SEBY) And you're not copied on</p> <p>12 this, but I want to point it out to you. It's an email</p> <p>13 from Colonel John Henderson, dated Friday,</p> <p>14 September 16th, 4:59 p.m., to Dave Archambault, who is</p> <p>15 the Chairman at this time of the Standing Rock Sioux</p> <p>16 Nation. And it's a -- the subject is "Press Release."</p> <p>17 And it's a forwarded press release. We don't know what</p> <p>18 Colonel Henderson is forwarding, other than the</p> <p>19 attachment. But this was given to Colonel Henderson to</p> <p>20 forward, and he did.</p> <p>21       And it says, "Mr. Chairman, I hope all is</p> <p>22 well for you.</p> <p>23       "Our staff will be sending you a copy of</p> <p>24 the permit by email soon; official copy [will] be sent</p> <p>25 by certified mail on Monday." So after the weekend is</p>	<p style="text-align: right;">Page 156</p> <p>1 number of news organizations and out on the Corps of</p> <p>2 Engineers website; which, fascinating to me, to this</p> <p>3 day, you can still see it on the Corps of Engineers</p> <p>4 website. Maybe it will now get taken down. But as of</p> <p>5 today, July 26, 2022, it's still there. And this</p> <p>6 announces, using very specific language somebody</p> <p>7 decided to purposely use, the title, "U.S. Army Corps</p> <p>8 of Engineers grants Special Use Permit . . ."</p> <p>9       "OMAHA, NEBRASKA - Today the . . .</p> <p>10 Corps . . . issued a Special Use Permit to the Standing</p> <p>11 Rock Sioux Tribe to use Federal lands managed by the</p> <p>12 Corps near Lake Oahe." So I guess, as misleading as</p> <p>13 this language that was chosen to be used, it does</p> <p>14 answer the question you asked earlier, "Well, we don't</p> <p>15 know who the permit was allowed for people to -- you</p> <p>16 know, was it just the Tribe, or was it other?"</p> <p>17       Here it says in the title and in the first</p> <p>18 paragraph, the Tribe. It doesn't say all-comers, even</p> <p>19 another tribe. It says the Standing Rock Sioux Tribe.</p> <p>20 That's the entity that was purportedly given</p> <p>21 permission. And it says the -- Colonel Henderson</p> <p>22 informed Standing Rock Sioux Tribe Chairman Archambault</p> <p>23 that the Tribe's spiritual gathering, located south of</p> <p>24 the Cannonball River, has been granted a special use</p> <p>25 permit, which allows the Tribe to gather and engage in</p>
<p style="text-align: right;">Page 155</p> <p>1 over, we're going to send you the official copy by</p> <p>2 certified mail.</p> <p>3       And, "We will send the attached" --</p> <p>4 "attached press release out this evening . . ." So</p> <p>5 while the chairman of the Sioux Tribe hasn't been given</p> <p>6 the permit, the press release is going out in two</p> <p>7 hours. And, "I wanted to give you the courtesy of</p> <p>8 reviewing it . . . prior to our release."</p> <p>9       And then, "Have a good weekend; thanks</p> <p>10 again for your partnership."</p> <p>11       MR. SEBY: So if we could turn to the</p> <p>12 attachment, which is the next page. If you could blow</p> <p>13 that up, Rachel, so the General can read it, top to</p> <p>14 bottom.</p> <p>15       Q. (BY MR. SEBY) This is Army Corps of</p> <p>16 Engineers. There's that official Army Corps crest</p> <p>17 again, isn't it? And it's entitled --</p> <p>18       A. True, but this one was -- this one was</p> <p>19 apparently a news release of the Corps of Engineers,</p> <p>20 not the Department of the Army.</p> <p>21       Q. Oh, I understand. I understand. I'm not</p> <p>22 suggesting otherwise. This is an official -- it's a</p> <p>23 pretty official-looking news release, isn't it?</p> <p>24       A. Standard format.</p> <p>25       Q. Yeah. And we know this went out to a</p>	<p style="text-align: right;">Page 157</p> <p>1 lawful free speech on federal lands designated in the</p> <p>2 permit.</p> <p>3       The Tribe's special use permit application</p> <p>4 requested to use the lands to the north and south;</p> <p>5 however, there's a grazing lease on the northern</p> <p>6 portion, so we're not giving it to you at this time.</p> <p>7       And then it says in the third paragraph --</p> <p>8 fourth paragraph, the special use permit allows the</p> <p>9 Tribe to use the lands, subject to the code. And</p> <p>10 several activities require additional permission;</p> <p>11 building structures, temporary or permanent, within the</p> <p>12 area of the special use permit.</p> <p>13       So what I want to ask you about is,</p> <p>14 Colonel Henderson hadn't even sent the permit to the</p> <p>15 Tribe. And the -- the document that he sent was not</p> <p>16 signed. And it says: Chairman, you sign this and</p> <p>17 comply with the terms and conditions, then I'll sign</p> <p>18 it, and then there will be an effective permit.</p> <p>19       So do you think that whoever wrote this</p> <p>20 press release got way ahead of their skis and used</p> <p>21 language that was not correct or misleading, saying</p> <p>22 that it was a done deal, when, in fact, nobody had even</p> <p>23 signed the document, and the compliance with the terms</p> <p>24 and conditions in the -- in the -- in the document</p> <p>25 itself hadn't even been given a chance to be met, and</p>

July 26, 2022

<p style="text-align: right;">Page 158</p> <p>1 never were met, weeks later, by the Standing Rock Sioux    2 Tribe? Do you disagree with any of that?</p> <p>3 A. So I disagree with a lot of that. You    4 have a lot in that -- packed into that one statement.    5 And we can take it piece by piece, but just --</p> <p>6 Q. Yes, sir.</p> <p>7 A. -- a couple things.</p> <p>8 Q. Yup.</p> <p>9 A. First of all, it says in the third major    10 paragraph, subject to federal rules and regulations of    11 Title 36. It doesn't say it's -- it's, you know, a    12 freebie. It says there are still going to be    13 conditions that are in there. It could have said -- we    14 like to always keep these to one page. It could have    15 said things like insurance and bonding. It doesn't say    16 that. But, on the other hand, it also says we --    17 you're going to have to come back to us if you have the    18 desire to have construction, permanent, et cetera, or    19 structures in the area. So those are still things    20 that, I think in this press release, are things that    21 still have to be worked out.</p> <p>22 When it comes to the scope of the    23 Department -- and the way I read this, but it's    24 strictly my interpretation, in the fourth line down    25 where it says, ". . . Dave Archambault, that the</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Yeah. And I'm not -- I'm not questioning    2 his integrity. I'm just asking you about the -- the    3 statements in the document. And one -- one statement I    4 want to ask you about, where it talks about additional    5 permission will be required for activities identified    6 in Title 36; such as construction, either temporary or    7 permanent, or any structures within the area identified    8 in the special use permit. Is it your understanding,    9 as of September 16th, the date that this statement    10 about additional permission would be necessary to have    11 temporary or permanent structures, is it your position,    12 General, that you know or knew that as of that date,    13 not a single temporary or permanent structure existed    14 on the area identified in the special use permit?</p> <p>15 A. So I don't know any of that answer. I    16 would tell you that I think my -- my interpretation is    17 that Colonel Henderson put that specific sentence in    18 there as to not get a perception of a blank check. In    19 other words, we're going to allow you to have this    20 permit; however, I want the -- in the public release,    21 to say anything you do that has to do with temporary    22 permit is an additional requirement for you to come    23 back. So I don't know why that was in there, but it's    24 probably just to be able to make sure that was clear.</p> <p>25 I would also predict, and it's strictly my</p>
<p style="text-align: right;">Page 159</p> <p>1 Tribe's Spiritual gathering . . .," I don't know how    2 you define that, but at some point, what it is    3 attempting to say, apparently, is that whatever that    4 gathering is now, we're going to allow that to go to    5 this other place. So that must be defined either as    6 members of a special council or whatever it is.</p> <p>7 But it doesn't appear to me to say,    8 "Anybody that wants to come protest with us has the    9 ability to do so under this special use permit." It's    10 really narrowed down at the very, very specifics of    11 whatever the Tribe's spiritual gathering is.</p> <p>12 And then I think the other thing is, you    13 made some inference that Henderson would sign it and    14 then -- no, I guess that -- I don't know how the order    15 of signatures goes. I think what happens is, he is    16 sending the permit down. The person that is asking for    17 the permit, that would be the Chief, would send it    18 back, and then it would be acted on by Henderson. So I    19 don't want to say that I know exactly what the process    20 is. I trust Henderson. And whatever the rules for a    21 special use permit, I would expect him to do it in    22 accordance with our process.</p> <p>23 Q. Expectation?</p> <p>24 A. I have no reason to doubt that    25 expectation. Henderson is a super solid officer.</p>	<p style="text-align: right;">Page 161</p> <p>1 conjecture, that we probably got pressure to put this    2 out within a couple hours -- this was, I guess, sent on    3 the night of that same decision of the overturn of the    4 injunction -- so that we would not have a lot of    5 protesting the next couple days. So I guess this is    6 16 September. But I imagine this is the order to    7 appease the Tribe to be patient, get the permit, and,    8 therefore, not protest.</p> <p>9 Q. Are you aware, General, that this document    10 was written by several other persons not employees of    11 the United States Department of the Army or the Corps    12 of Engineers?</p> <p>13 A. No, I have no idea.</p> <p>14 MS. ZILIOLI: Objection; assumes facts,    15 misstates evidence.</p> <p>16 A. I don't know that.</p> <p>17 Q. (BY MR. SEBY) General -- General, would    18 you be surprised to learn that this document was    19 exchanged and commented on and edited by the Chief of    20 Staff of the Secretary of the Interior and several    21 staff people in the White House in the executive office    22 of the President?</p> <p>23 MS. ZILIOLI: Objection; assumes facts,    24 misstates evidence.</p> <p>25 A. That doesn't surprise me. That doesn't</p>

July 26, 2022

<p>1 surprise me.</p> <p>2 Q. (BY MR. SEBY) All right. And the</p> <p>3 Department of Justice, by that -- by that measure, that</p> <p>4 wouldn't surprise you either?</p> <p>5 MS. ZILIOLI: Same objections.</p> <p>6 A. No.</p> <p>7 Q. (BY MR. SEBY) Okay. Maybe even</p> <p>8 Ms. Zilioli had a hand in it.</p> <p>9 MS. ZILIOLI: Same objections.</p> <p>10 MR. SEBY: Thank you for laughing. That's</p> <p>11 all it was intended for.</p> <p>12 Q. (BY MR. SEBY) So on this press release,</p> <p>13 would you agree with me that it's -- it's confusing?</p> <p>14 A. So I'm not going to use that word. I</p> <p>15 think it probably was intended to have a certain</p> <p>16 effect. And perhaps whoever contrived what that effect</p> <p>17 was, they felt that this language did that. So we</p> <p>18 might have done it a little different if, in fact, what</p> <p>19 you say is true, that we did not write it. So,</p> <p>20 therefore, the question is, whoever the authors were,</p> <p>21 did this achieve their end state?</p> <p>22 Q. Well, I appreciate that it was intended to</p> <p>23 have a certain effect. I totally agree. What effect</p> <p>24 do you think that was?</p> <p>25 A. Again, I think this was a stalling action</p>	<p>Page 162</p> <p>1 Exhibit 429 on the -- on the screen. If we could go to</p> <p>2 the email that is attached to that cover email. And --</p> <p>3 so this is an email from Ms. Darcy, Wednesday,</p> <p>4 September 21, 2016. And it's addressed to Major</p> <p>5 General Jackson and Lowry Crook. And she simply says,</p> <p>6 after General Jackson, in the email below, reported to</p> <p>7 her that the Corps of Engineers had issued the permit</p> <p>8 to the Standing Rock Sioux Tribe -- and the report from</p> <p>9 General Jackson below says that -- this is under the</p> <p>10 "Omaha responses" section of the email, the bottom</p> <p>11 there. General Jackson is saying that -- saying</p> <p>12 something that's not in the press release, General.</p> <p>13 "The permit is only for the south side of the river,</p> <p>14 with associated conditions. The Tribe has not signed</p> <p>15 the acknowledgment for this permit yet not met the</p> <p>16 liability requirements, so there is currently no permit</p> <p>17 in place."</p> <p>18 And no permit in place is different than</p> <p>19 the language that the kitchen of cooks that wrote the</p> <p>20 press release used imprecisely. And then General --</p> <p>21 or, pardon me, Ms. Darcy writes back to General Jackson</p> <p>22 saying, simply, "So, there's no permit in place for</p> <p>23 this south encampment, even though we announced</p> <p>24 Friday . . . that there was?"</p> <p>25 So when I asked you whether you thought</p>
<p>Page 163</p> <p>1 or a -- no, that's not right. This was an action to</p> <p>2 make -- make the tribes feel that they were getting</p> <p>3 some degree of accommodation.</p> <p>4 Q. Yup. And, in fact, being told that,</p> <p>5 "We're giving you a permit," right?</p> <p>6 A. Apparently.</p> <p>7 Q. Yeah. Okay. And the question of whether</p> <p>8 you think it's unclear, or worse, misleading, which</p> <p>9 implies some intent -- and I don't know that, I just</p> <p>10 know that it's -- what I do know is it generated some</p> <p>11 interesting confusion. And I want to show you an</p> <p>12 example of that that's not a man-on-the-street kind of</p> <p>13 confusion. But let's look at Exhibit 429.</p> <p>14 MS. ZILIOLI: Counsel, I'm going to</p> <p>15 object. I believe we're over the four hours. We can</p> <p>16 take a -- go off the record if you want to confirm</p> <p>17 that.</p> <p>18 MR. SEBY: Let's go off the record.</p> <p>19 THE VIDEOGRAPHER: Going off the record.</p> <p>20 The time is 6:43 p.m., 12:53 p.m. Mountain.</p> <p>21 (Discussion off the record.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p> <p>23 record. The time is 6:57 p.m. UTC,</p> <p>24 12:57 p.m. Mountain.</p> <p>25 Q. (BY MR. SEBY) So, General, we have</p>	<p>Page 163</p> <p>1 anybody could be confused by this, you -- you didn't</p> <p>2 answer it. And here, I'm showing you that the</p> <p>3 Assistant Secretary of the Army for Civil Works was</p> <p>4 confused by the press release and the way in which the</p> <p>5 cabal of cooks wrote it and came away with a very</p> <p>6 different impression than you did when you tried to</p> <p>7 explain what it really meant, when it doesn't say that.</p> <p>8 And I would just say that Ms. Darcy is the evidence of</p> <p>9 that confusion, in her own words, so --</p> <p>10 MS. ZILIOLI: Objection, misstates</p> <p>11 evidence. Sorry (inaudible).</p> <p>12 MR. SEBY: Great.</p> <p>13 THE REPORTER: Hold on. Excuse me. I</p> <p>14 couldn't hear you, Ms. Zilioli.</p> <p>15 MS. ZILIOLI: I withdrew my objection,</p> <p>16 because he wasn't finished.</p> <p>17 THE REPORTER: Okay. Thank you.</p> <p>18 Q. (BY MR. SEBY) So, General, do you recall</p> <p>19 a time when the U.S., as a whole, ever made a statement</p> <p>20 that resulted in a deescalation of the DAPL protests?</p> <p>21 MS. ZILIOLI: Objection; misstates</p> <p>22 evidence and testimony.</p> <p>23 Q. (BY MR. SEBY) I'm asking --</p> <p>24 A. I'm sorry. I just don't understand the</p> <p>25 question.</p>

July 26, 2022

<p style="text-align: right;">Page 166</p> <p>1           Q. I'm just asking you if you can identify    2 any instance when the United States, writ large, ever    3 did anything, statement or action, that resulted in a    4 deescalation of the DAPL protests occurring for months    5 on Corps property?</p> <p>6           A. So I think there were actions taken with    7 respect to, you know, certain things we were trying to    8 do with the State and law enforcement, the National    9 Guard, et cetera, that I think attempted to do    10 deescalation. But I'm not sure that any of those were    11 manifested.</p> <p>12           Q. "Manifested" meaning ever actually caused    13 a deescalation?</p> <p>14           A. Yeah, actually -- actually implemented.</p> <p>15           Q. Okay. General, I don't have any further    16 questions for you. And I've understood that all of    17 your answers are your answers, unless you choose now to    18 clarify or withdraw or add to any of them. Do you wish    19 to do any of those things?</p> <p>20           A. I don't. I think it's just fair to say    21 that that last set of emails, there was a lot on there,    22 and I didn't really have a chance to review the whole    23 document. But I -- I think I understand the context of    24 it, but in no way have I ever seen that document    25 before. And I did not -- was not able to internalize</p>	<p style="text-align: right;">Page 168</p> <p>1 relative to Ed Jackson's clarification. That -- that's    2 all I'm making a point of, and I'll leave it there.</p> <p>3           A. I would just end by saying that I think    4 where there was an intent to issue the permit, and then    5 the question is, was it actually done in accordance    6 with the conditions of the permit, those are two    7 different things. And I could understand how an    8 uninformed political appointee might not have    9 understood the nuances of not following through with    10 the rest of the permit. So I'll leave it there.</p> <p>11           Q. Yeah, sure, sure. And along -- along with    12 the thousands of protesters who probably were also led    13 to believe something that wasn't true.</p> <p>14           MR. SEBY: All right. That's -- that's    15 the end of my questions, General. Thank you for your    16 time today. I appreciate it.</p> <p>17           THE DEPONENT: Thank you for yours.</p> <p>18           MR. SEBY: Thank you, sir.</p> <p>19           THE VIDEOGRAPHER: Before we go -- sorry.</p> <p>20           MS. ZILIOLI: I was just going to say,    21 this is Erica Zilioli. We have no questions for    22 General Semonite. We'll read and sign.</p> <p>23           THE VIDEOGRAPHER: And would you like a    24 copy of the video?</p> <p>25           MR. SEBY: Yes.</p>
<p style="text-align: right;">Page 167</p> <p>1 some of the messages that Ms. -- that was underneath    2 Ms. Darcy's note.</p> <p>3           Q. Well, I would just point out that General    4 Jackson's email explaining that Ms. -- that there is    5 actually no permit, because the Corps hadn't signed it    6 as of almost a week later and -- acknowledging it, and    7 they've not met the liability requirements, so there's    8 no permit in place. That email, sir, includes you as    9 a -- as an addressee, after Ms. Darcy. And so you did    10 get it.</p> <p>11           And September 21st, whatever you may not    12 have known before then, here was another instance to    13 let you know that there is no permit. And whatever    14 confusion you had, if any, isn't the question that I    15 asked. I was just pointing out Ms. Darcy's response,    16 which I don't understand -- I don't take it that you're    17 arguing those. That's actually not what she said. But    18 what she said is, "Really? There is no permit in place    19 for the south encampment, even though we said there    20 was?"</p> <p>21           And my point was, is that the confusion --    22 I asked you whether it was possible to read that press    23 release -- existed. You had a ready explanation why I    24 was wrong. Yet, I showed you Ms. Darcy totally    25 indicating confusion about what the press release said,</p>	<p style="text-align: right;">Page 169</p> <p>1           MS. ZILIOLI: We -- we just order the    2 transcript. So I'll defer to --</p> <p>3           THE DEPONENT: Oh, I would like a copy.</p> <p>4           THE REPORTER: I'm sorry. Who is -- who    5 is talking right now?</p> <p>6           THE DEPONENT: Yeah. General Semonite.</p> <p>7 If it's available or acceptable, I'd like a copy.</p> <p>8           THE VIDEOGRAPHER: It's if your attorney    9 would like it and . . .</p> <p>10           MS. ZILIOLI: Mr. Banks, we'll -- we'll go    11 through the U.S. Attorney's Office on any order for    12 that. Thank you.</p> <p>13           THE VIDEOGRAPHER: Okay. Great.</p> <p>14 Mr. Jafek?</p> <p>15           MR. JAFEK: I think we'll just do our    16 standard, what we've done in other depositions.</p> <p>17           THE VIDEOGRAPHER: All right. We are    18 going off the record. This concludes the remote    19 video-recorded deposition of General Todd Semonite.</p> <p>20 The time is 7:04 p.m. UTC, 1:05 (sic) p.m. Mountain.</p> <p>21 We are off the record.</p> <p>22           (The following proceedings were held    23 outside the videotape portion of the deposition.)</p> <p>24           THE REPORTER: Mr. Seby, would you like a    25 copy of the transcript?</p>

July 26, 2022

<p>1 MR. SEBY: Yes, please.</p> <p>2 THE REPORTER: And do you need another</p> <p>3 copy of the exhibits with the sticker on them?</p> <p>4 MR. SEBY: Ms. Hymel will help us with</p> <p>5 that answer, please.</p> <p>6 MS. HYMEL: I would say yes. And can we</p> <p>7 make sure the video for our copy is synchronized,</p> <p>8 please, Mr. Banks?</p> <p>9 THE VIDEOGRAPHER: Absolutely.</p> <p>10 MS. HYMEL: Thank you, sir.</p> <p>11 THE REPORTER: Ms. Zilioli, did you say</p> <p>12 you were ordering a copy at this time, or you needed to</p> <p>13 check?</p> <p>14 MS. ZILIOLI: We do order a copy of the</p> <p>15 transcript, yes. I do need to check on the video,</p> <p>16 because I don't believe we have traditionally ordered</p> <p>17 the video. So we'll have to look into that before</p> <p>18 responding.</p> <p>19 THE VIDEOGRAPHER: You can always let us</p> <p>20 know.</p> <p>21 THE REPORTER: Would you like another copy</p> <p>22 of the exhibits with the sticker on them as well?</p> <p>23 MS. ZILIOLI: Can we get back to you on</p> <p>24 that? I don't know what the standard order has been.</p> <p>25 I don't handle those. I'm sorry.</p>	<p>Page 170</p> <p>1 I, LIEUTENANT GENERAL TODD T. SEMONITE</p> <p>2 (RET.), do hereby certify that I have read the above</p> <p>3 and foregoing deposition and that the same is a true</p> <p>4 and accurate transcription of my testimony, except for</p> <p>5 attached amendments, if any.</p> <p>6 Amendments attached <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7</p> <p>8</p> <p>9</p> <p>10 LIEUTENANT GENERAL TODD T. SEMONITE (RET.)</p> <p>11</p> <p>12</p> <p>13 The signature above of LIEUTENANT GENERAL</p> <p>14 TODD T. SEMONITE (RET.) was subscribed and sworn to or</p> <p>15 affirmed before me in the county of _____, state of</p> <p>16 Colorado, this _____ day of _____, 2022.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Notary Public</p> <p>22 My commission expires</p> <p>23</p> <p>24</p> <p>25 State of North Dakota, 7/26/22 (go)</p>	
	<p>Page 171</p> <p>1 THE REPORTER: Okay. No problem. Thank</p> <p>2 you.</p> <p>3 MS. ZILIOLI: I took down your email.</p> <p>4 Thanks so much.</p> <p>5 WHEREUPON, the within proceedings were</p> <p>6 concluded at the approximate hour of 1:04 p.m. Mountain</p> <p>7 on the 26th day of July, 2022.</p> <p>8 * * * * *</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 173</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF COLORADO )</p> <p>3 CITY AND COUNTY OF DENVER )</p> <p>4 I, GAIL OBERMEYER, Registered Professional</p> <p>5 Reporter and Notary Public ID 19994012647, State of</p> <p>6 Colorado, do hereby certify that previous to the</p> <p>7 commencement of the examination, the said LIEUTENANT</p> <p>8 GENERAL TODD T. SEMONITE (RET.) verbally declared his</p> <p>9 testimony in this matter is under penalty of perjury;</p> <p>10 that the said deposition was taken in machine shorthand</p> <p>11 by me at the time and place aforesaid and was</p> <p>12 thereafter reduced to typewritten form; that the</p> <p>13 foregoing is a true transcript of the questions asked,</p> <p>14 testimony given, and proceedings had.</p> <p>15 I further certify that I am not employed</p> <p>16 by, related to, nor of counsel for any of the parties</p> <p>17 herein, nor otherwise interested in the outcome of this</p> <p>18 litigation.</p> <p>19</p> <p>20 IN WITNESS WHEREOF, I have affixed my</p> <p>21 signature this 3rd day of August, 2022.</p> <p>22 My commission expires May 20, 2023.</p> <p>23</p> <p>24</p> <p>25</p>

	Page 174
1	Errata Sheet
2	
3	NAME OF CASE: Plaintiff vs UNITED STATES
4	DATE OF DEPOSITION: 07/26/2022
5	NAME OF WITNESS: Lieutenant General Todd T. Semonite (Ret.)
6	Reason Codes:
7	1. To clarify the record.
8	2. To conform to the facts.
9	3. To correct transcription errors.
10	Page ____ Line ____ Reason ____
11	From _____ to _____
12	Page ____ Line ____ Reason ____
13	From _____ to _____
14	Page ____ Line ____ Reason ____
15	From _____ to _____
16	Page ____ Line ____ Reason ____
17	From _____ to _____
18	Page ____ Line ____ Reason ____
19	From _____ to _____
20	Page ____ Line ____ Reason ____
21	From _____ to _____
22	Page ____ Line ____ Reason ____
23	From _____ to _____
24	
25	_____